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CURRENT TOPICS

Sir William Bird

WE regret to learn that Sir WILLIAM BARROTT MONTFORT BIRD, J.P., who would shortly have been taking out his seventieth practising certificate as a solicitor, died on 13th November, at the age of ninety-five. The senior partner of Messrs. Bird and Bird, of Gray's Inn, he was born on the 11th July, 1855, and admitted in 1880, being one of the oldest solicitors on the roll. He was the second son of William Frederick Wratislaw Bird, a solicitor of Gray's Inn, and after his education at Bruce Castle under Dr. Birkbeck Hill he took over his father's business at an early age and built up a flourishing practice, in which he was subsequently joined by his cousin, the late Sir Ernest Bird, who was President of The Law Society in 1943. He was High Sheriff of Sussex in 1912–13 and Member of Parliament for the Chichester Division of West Sussex from 1921–23. He was knighted in 1920. He was Master of the Salters' Company in 1919–20 and was also a past Master of the Makers of Playing Cards Company. A director of Williams Deacon's Bank, the Staveley Coal and Iron Company and the Park Gate Iron and Steel Company, he retired from active part in his firm's practice some years ago.

The Work of The Law Society

DURING the month of October, the first month in which the Legal Aid Scheme was in operation, 9,060 applications were made for legal aid in the High Court, the ATTORNEY-GENERAL informed the House of Commons on 8th November. He was moving the second reading of the Solicitors Bill, which, like the similar Bill which lapsed during the last session of Parliament, seeks to increase the maximum fee for annual practising certificates to £5. In reviewing briefly the statutory functions and public responsibilities of The Law Society for which revenue has to be found, Sir HARTLEY SHAWCROSS said: "In modern times, although the attractions of the legal profession have certainly not increased, the members of it have shown a steadily increasing, and now very high, sense of public duty and responsibility, and I have no doubt at all that that is very largely due to the encouragement which The Law Society and, on my side of the profession, the Bar Council have given to a corporate sense of public responsibility, of service and of obligation in return for the privileges which members of the legal profession enjoy." He continued: "A notable example, of course, is the work of the recent Committee on Legal Aid, under LORD RUSHCLIFFE. The scheme which was finally adopted by Parliament for providing legal aid was conceived by The Law Society and, in particular, by its indefatigable secretary, Mr. LUND." He commended the Bill as assisting the interests of the public and promoting the public spirit of the profession.

Compulsory Land Registration in Surrey

THE Lord Chancellor proposes to lay a draft Order in Council before both Houses of Parliament with a view to introducing compulsory registration of title to land in Surrey from

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1st October, 1951, announced the ATTORNEY-GENERAL in reply to a Parliamentary question on 13th November. This procedure, he said, was in accordance with s. 122 of the Land Registration Act, 1925. Section 122, which relates to compulsory registration orders made otherwise than at the instance of a county council, provides that notice, accompanied by the draft order (which is also to be published in the *Gazette*), shall be given to the county council not less than six months before the order is made. The county council and any law society whose district will be affected, or either of them, may then within six months pass a resolution for a public inquiry, and after publication of the result, or after six months have expired without such a resolution, the draft order may be laid before Parliament. The order shall not be made unless both Houses approve the draft, with or without modifications.

County Court Fees

THE County Court Fees (Amendment) Order, 1950 (S.I. No. 1768 (L.26)), amends the County Court Fees Order, 1949. The Liabilities (War-Time Adjustment) Act, 1941, and the Courts (Emergency Powers) Act, 1943, were brought to an end by Order in Council dated 9th October, 1950 (S.I. No. 1647), and consequential amendments are made to fees. The note to para. (*a*) of fee No. 1 (v) is to be omitted; a fee of 10s. is substituted for fee No. 14 on a release of a ship or goods; and fee No. 26 is revoked. Fee No. 56 (ii), being the fee payable on instituting interpleader proceedings under an execution, is revoked. Exemption from a fee hitherto given under fee No. 8 (i) to applications for extensions of time for service of default summonses is extended to all summonses. Fee No. 45 (i), the fee payable on the issue of a warrant of delivery, is amended, so that in hire-purchase cases it will be determined by the balance of the hire-purchase price attributable to the goods when the warrant is issued.

Bar Council Ruling on Cross-Examination

ON 6th November, 1950, the Council approved a ruling of professional etiquette that in cross-examination in all cases it is the duty of the barrister to guard against being made the channel for questions which are only intended to insult or annoy either the witness or any other person, and to exercise his own judgment both as to the substance and the form of the questions put. In such cross-examination, the ruling continued, it is not improper for counsel to put questions suggesting fraud, misconduct or the commission of any criminal offence (even though he is not able or does not intend to exercise the right of calling affirmative evidence to support or justify the imputation they convey), if he is satisfied that *the matters suggested are part of his client's case* and he has no reason to believe that they are only put forward for the purpose of impugning the witness's character. Under the rules of evidence, affirmative evidence cannot in general be called to contradict answers given to questions asked in cross-examination directed only to credit. Questions which affect the credibility of a witness by attacking his character, but are not otherwise relevant to the actual inquiry, ought not to be asked unless the cross-examiner has reasonable grounds for thinking that the imputation conveyed by the question is well-founded or true. The ruling adds that a barrister who is instructed by a solicitor that in his opinion the imputation is well-founded or true, and is not merely asked to put the question, is entitled *prima facie* to regard such instructions as reasonable grounds for so thinking and to put the questions accordingly. A barrister should not accept the statement of any person other than the solicitor instructing him that the imputation is well-founded or true, without ascertaining, so far as is practicable in the circumstances, that such person can give satisfactory reasons for his statement. Such questions should only be put if, in the opinion of the cross-examiner, the answers would or might materially affect the credibility of the witness; and if the imputation conveyed by the question relates to matters so remote in time or of such a character that it would not materially affect the credibility of the witness, the question should not be put. This ruling supersedes that of the Annual Statement, 1917, at p. 7 (which appears in the Annual Practice, 1949, at p. 3685 under the heading "Cross-examination to Credit").

Control of Building Operations

CIRCULAR 108/50 issued on 6th November by the Ministry of Health states that in a recent case a building licence for the erection of a new house was sold by the licensee to another person, for whom the house was then erected. As it is the intention that licences should be issued for new houses to those whose need is greatest, the sale or transfer of licences is clearly undesirable. The circular states that prosecution is usually a difficult matter and local authorities should therefore normally refer such instances as come to their notice to the Regional Office of the Ministry of Works for consideration. In order that it may be made even more clear to licensees that the licence is personal to them and may not be transferred, it has been decided to amend the licence form CL.1138 in certain respects detailed in the circular.

The Shortage of Solicitors' Clerks

"IT is generally recognised in the profession that good managing clerks are becoming increasingly scarce and that fewer unadmitted men are being attracted into service. Lack of assured pensions may well have something to do with it." So says a letter which has been sent by Mr. DAVID L. POLLOCK, the chairman of the Solicitors' Clerks' Pension Fund, to the presidents of all the provincial law societies and associations, asking their aid in drawing the attention of solicitors to the fund. The letter points out that the profession is falling behind the modern practice of industry and commerce, which is increasingly seeking to attract and retain good employees by offering and assuring proper pensions on retirement. Local government and the Civil Service, also, as was pointed out recently in an editorial in this journal, must have absorbed thousands of young men who might have been good solicitors' clerks but for the attractions of pension schemes and the like. Solicitors who find it difficult to recruit staff might well note that the Solicitors' Clerks' Pension Fund was established in 1930 under the auspices of The Law Society to serve the needs of the profession by offering an opportunity to assure pensions to clerks on a contributory basis and to take maximum advantage of the tax reliefs obtainable. The address is 2 Stone Buildings, Lincoln's Inn.

National Institute for the Blind and Legacies

IN its annual report, just published, the National Institute for the Blind makes a special reference to the happy relations it enjoys as a voluntary body with the State: "The Institute has been fully accepted by the State as a partner in the plans it has laid down. Not a single activity has been curtailed by the State; on the contrary, each has been left free to develop on an unimpaired voluntary foundation." In its reference to legacies as "a mainstay of voluntary effort," the report assures solicitors that no part of a legacy to the Institute is either appropriated by, or administered under the direction of, the State.

THE SALE OF NEW CARS—II

WE now come to consider the cases which arise from the fact that hundreds of cars were ordered in the period of interregnum between the ending of the Government's licensing scheme on 31st December, 1945, and the launching of the British Motor Trade Association's covenant scheme on 15th August, 1946. During the war, Mr. Jack Barclay and Mr. George Monkland had discussed the question of post-war cars, and the latter placed an order in May, 1946, for a Rolls-Royce and a Bentley car, the form used stipulating: "The sellers will use their best endeavours to secure delivery . . . on the estimated delivery dates from time to time furnished, but they do not guarantee time of delivery nor shall they be liable for any damages or claim of any kind in respect of delay in delivery." In 1947, Rolls-Royce, Ltd., and their associated company Bentley Motors (1931), Ltd., entered the covenant scheme, and in November, 1947, Jack Barclay, Ltd., wrote to Mr. Monkland inquiring whether he was prepared to enter into a covenant. He refused to do so, saying: "My contract was entered into and the deposit paid by me before this condition was introduced by the association. That being the position, clearly I cannot be compelled subsequently to recognise and accept a condition that was not part of the original arrangement, and it is not reasonable that I should be asked to do so." The outcome was that Rolls-Royce, Ltd., delivered to Mr. Monkland one of their cars on 5th February, 1948, which he immediately sold at a profit of £1,150.

On 28th January, 1948, Bentley Motors (1931), Ltd., had written to Jack Barclay, Ltd.: "As this gentleman [Mr. Monkland] is shortly taking delivery of a Rolls-Royce model we take it that you do not wish him to have early delivery of the Bentley . . . We have therefore transferred his order to 'some other name on the list of priorities,' which we hope will meet with your approval." And this was done. In *Monkland* v. *Jack Barclay, Ltd.* (1950), 94 SOL. J. 457, the plaintiff sued the defendants for breach of contract, claiming as damages the loss of the profit which he would have made on a resale of the car. The case was tried by Humphreys, J., who took the view that the question of public policy in passing over Mr. Monkland in favour of someone who was on the list of priorities and who, presumably, was willing to enter into a covenant, did not arise, and that the defendants' duty was to supply Mr. Monkland with his car within a reasonable time despite the fact that the Government had, right from 31st December, 1945, asked the dealers to supply cars in accordance with need and the national interest. The defendant was not entitled to import a condition into the contract *ex post facto*, and "it is undeniably a principle of public policy that persons who enter into contractual engagements should be required to fulfil them" (*per* Lord MacMillan in *Beresford* v. *Royal Insurance Company* [1938] A.C. 586, at p. 604). Damages were fixed at £1,500.

An appeal has been lodged in this case, but the immediate effect was to render liable to actions for damages dealers who, in accordance with the Government's request, had delivered cars out of rotation in accordance with the official representations, viz.: first, doctors supported in their applications by the British Medical Association, next midwives supported by the Ministry of Health, then veterinary surgeons supported by the National Veterinary Medical Association, and thereafter "those engaged in an essential business or profession whose existing transport is of a mileage and condition sufficient to justify replacement to enable them to carry out their business or profession satisfactorily in the national interest."

The case appeared to indicate that any dealer who passed over one customer in favour of another with more urgent need committed a breach of contract with the first customer. If this was a true exposition of the law, it seemed that the queues of customers would shift from the dealers' premises to the High Court, for almost every dealer had had to pass some customers over in carrying out the Government's requirement.

The existing state of uncertainty clearly had to be clarified by the courts, and at an early date. It was obvious, however, that the *Monkland* appeal could not be heard for many months and that in the meantime hundreds of writs might be issued. Two main points had to be decided:—

(*a*) whether dealers were entitled to discriminate between their customers as required by the Government; and

(*b*) whether dealers were entitled to accept a customer's refusal to sign a covenant as evidence that his need of a new car was not urgent in the national interest.

In apprehension of exposing themselves to liability for passing over a customer, Hartwells of Oxford, Ltd., wrote to the Association—of which they were a member—stating: "All orders for new cars received and accepted by us whether before or after the covenant scheme came into force will in future be completed by us in strict rotational order . . . irrespective of whether he [the customer] is prepared to sign a deed of covenant or not (except when he has expressly agreed so to do when giving the order) or whether he requires the car for his own use or for immediate re-sale. Moreover, we do not intend to alter our list in any way to give priority to some customers, such as doctors, who are in more urgent need of cars than other customers, as we are advised that we are not entitled to discriminate in this manner." The Association's reply to this was that such conduct would be contrary to the objects and rules of the Association and might result in the firm being placed on the "stop" list. The plaintiffs failed to obtain an injunction on motion from Danckwerts, J., to restrain the Association from placing them on the "stop" list if they adhered to the above course of conduct, and the result of their appeal is reported in *Hartwells of Oxford, Ltd.* v. *British Motor Trade Association* (1950), 94 SOL. J. 505.

In June, 1950, the Ford Motor Company, Ltd., had written to the plaintiffs stating that allocations to them were conditional upon each case being studied in detail by the dealers, before delivery was arranged, on the terms of the priority system mentioned above. They added: "It is imperative that you should take the greatest care to ascertain your customer's need, condition of present transport and other material circumstances, in order that you may be fully armed with all relevant facts to enable you properly to exercise the discretion vested in you. If, however, you feel you have entered into contractual obligations which run counter to this directive, you should refer the details of the order to us."

In addition to entitling them to impose such conditions as the above, the Ford agreement with Hartwells provided that they would remain members of the British Motor Trade Association and be bound by its rules from time to time in force.

Somervell, L.J., held that the Ford agreement, coupled with their letter on delivery and the rules of the Association requiring the obtaining of a covenant, afforded a good defence to a dealer to a claim by a customer for damages for delay in delivery. He further held that a reasonable time for delivery to a customer could not arrive until the dealer received from the manufacturer a car which he was free to allocate to that

customer. In this case the manufacturer was in effect saying that cars would be supplied to the dealer for resale only on condition that they were supplied to customers who needed them and that a covenant was executed by the purchaser. His lordship also expressed the view that, even when there was no agreement with the manufacturers to rely on, in times of scarcity a dealer could imply a term into his contracts with his customers which entitled him to discriminate between them in the national interest. The appeal was accordingly dismissed and the matter rests there.

Thus far we have considered the rules and law affecting delivery of cars to the home market, but a considerable amount of litigation, both civil and criminal, has already occurred with regard to the export of cars. Originally there was a scheme whereby cars would be supplied from the export quota for home use against payment in any foreign currency. This scheme was used by the "black market" by simply sending money abroad and then paying in foreign currency —Bombay was the favourite venue for the transaction— and it was ended in 1948. At present the system is that, firstly, persons coming on leave from overseas can obtain immediate delivery of a car from the export quota without paying purchase tax, but the car must go back with them within a specified period, not exceeding twelve months. A statutory declaration is required to be made with H.M. Customs and Excise before the car is supplied. Persons who are leaving this country to reside abroad can also take advantage of this scheme, but delivery will only be made in the country of their destination. If there should be a breach of the statutory declaration and the car is not in fact exported within the time specified, then the Customs and Excise authorities will look to the manufacturer for payment of the purchase tax on the vehicle. He therefore either requires a sum to be deposited with him by the purchaser against this eventuality, or requires the purchaser to take out an insurance policy against the manufacturers having to pay the tax.

In spite of the penalties for perjury, many persons made statutory declarations and then promptly resold their cars in the black market for handsome profits. To counteract this, the "export covenant" was introduced in 1948. This is similar to the ordinary covenant except that the purchaser also covenants to remove the vehicle permanently from the United Kingdom within the period of purchase tax exemption —which is not more than twelve months. He undertakes not to give, sell, pledge or hire the car in any way meanwhile without the consent of the Association. The agreement is declared to be construable and to take effect as a contract made in England and in accordance with the law of England, and the purchaser submits to the jurisdiction of the High Court.

These purchases for export are naturally open to abuse, and one of many actions brought by the Association was that of *British Motor Trade Association* v. *Stanley Vaughan Godden* (25th January, 1949) (unreported). The defendant, having obtained a car under the home leave scheme, sold it in England in breach of covenant. He evaded service of proceedings and an order for substituted service was made. The Association recovered damages and costs. The defendant returned to Australia and resisted the judgment, but it was finally enforced in Australia.

An interesting criminal case on this subject is *R.* v. *Barber, Jopson, Reed and Mayhew* (27th June, 1949, Nottingham Summer Assizes) (unreported). Six charges of conspiracy were alleged against the prisoners, four of them being alleged conspiracies to do acts tending to the public mischief, and two of them alleged conspiracies to obtain cars by false pretences from various manufacturers. The first-named three pleaded guilty to two further charges of public mischief by making false statutory declarations and by entering into deeds of covenant and breaking them. The prosecution, Mr. Arthur Ward, K.C., accepted these pleas and withdrew the rest of the indictment. Mayhew, who was alleged by the prosecution to be merely the "catspaw" used by the others, was discharged on his plea of not guilty being accepted. Mr. Russell Vick, K.C., addressed the court on behalf of the prisoners. Passing sentence, Stable, J., said: "In this case let there be no possible mistake or misunderstanding. In my judgment it is abundantly plain—plain beyond argument or discussion—that these matters were matters of grave public mischief. These restrictions on the purchase and sale of commodities are not restrictions that are imposed to annoy or to hamper. It is perfectly apparent to anyone who gives the matter a moment's serious thought that, unless we expand and maintain our export trade and get the foreign currency that it puts at our disposal, the population of this island cannot exist . . . You have organised and planned the most elaborate racket by means of false documents . . . you have deliberately got possession of motor-cars by pretending that they were going overseas. Of course, you knew perfectly well that they were not. The intention of the thing was to sell them in this country at a profit to yourselves. One of you said that you did not realise that if you were found out you were making yourselves liable to punishment; but if you did not realise that what you were doing was hopelessly wrong—wrong in every sense of the word—then you must have the most elastic consciences. It is perfectly apparent that this was a disreputable system of trade, and one which would do harm to people who try and conduct their lives reputably and according to law. It is true that no one has been defrauded, but I am quite unable to take a lenient view of the offences charged." Barber was fined £50, being a younger and subordinate member of the group. The other two were each sentenced to twelve months' imprisonment.

It may perhaps be added that in addition to the offence of public mischief, a person who "knowingly and wilfully . . . makes a statement false in a material particular . . . in a statutory declaration" is guilty of a misdemeanour and is liable to a fine and/or imprisonment of up to two years.

From time to time less drastic methods have been employed by the Association to deter breakers of export covenants. Thus in *British Motor Trade Association* v. *Foan* (17th January, 1950) (unreported), an injunction was granted by Vaisey, J., to restrain the defendant from disposing of his car in breach of his export covenant. An order was also made directing him to carry out his undertaking to export the car within a specified period. In this case the car had been ordered from India and the defendant had taken delivery whilst on leave in the United Kingdom. It had come to the ears of the Association that he was offering the car for sale at £400 above list price.

It is possible for nationals of most "hard currency" countries and employees in the United Kingdom of foreign organisations of those countries to purchase cars for permanent use in this country off the export quota by paying for the car in their own currency at list price plus purchase tax. They are also required to enter a covenant preventing disposal of the car for a period of two years. Quite apart from the offences already referred to, a person who endeavours to purchase a car sold under this scheme is liable to infringe s. 5 of the Exchange Control Act, 1947: "Except with the permission of the Treasury, no person shall do any of the following things in the United Kingdom, that is to say:

(*a*) make any payment to or for the credit of a person resident outside the scheduled territories; or (*b*) make any payment to or for the credit of a person resident in the scheduled territories by order or on behalf of a person resident outside the scheduled territories; or (*c*) place any sum to the credit of any person resident outside the scheduled territories." And para. 1 (1) of Sched. V (Pt. II of the Act) makes it an offence to conspire or attempt, or aid, abet, counsel or procure any other person to commit an offence by contravening any restriction or requirement imposed by or under the Act.

In conclusion, two decisions of general import may be mentioned. First, *British Motor Trade Association* v. *Highton* (17th March, 1950) (unreported), wherein Romer, J., granted an injunction to restrain a dealer from *procuring* breaches of covenants: "That the defendants, and each of them, whether themselves or by their servants or agents or otherwise be restrained until trial or further order from buying or facilitating the dealing with motor-cars . . . offered for sale or other disposal by a person or by the agent of a person known by them to have executed a deed of covenant with the plaintiffs and to contemplate breaking such covenant." Secondly, *British Motor Trade Association* v. *Sybil Joan Telford* (18th April, 1950) (unreported), in which Harman, J., issued a warning that the defendant would be "in a serious position" if her husband sold a car which he had bought, having got his wife to enter into the deed of covenant. Counsel argued that he was not bound by the covenant, and that the wife was not liable as she did not own the car. The court, however, took the view that Mrs. Telford was estopped from denying her liability on the covenant.

G. H. C. V.

BANKRUPTCY LAW AND PRACTICE—III

ACTS OF BANKRUPTCY—*continued*

2. Fraudulent Transfer and Fraudulent Preference

IN the last article in this series we dealt with non-compliance with a bankruptcy notice. Of the other acts of bankruptcy enumerated in s. 1 (1) of the Bankruptcy Act, 1914, two —the fraudulent transfer and the fraudulent preference— are rarely used to found a petition in bankruptcy. The reason is that a transaction which falls into either category is unlikely to be brought to light until after the debtor has been made bankrupt and the official receiver or trustee in bankruptcy has investigated his affairs. So what happens in practice is that the debtor is adjudicated on some other act of bankruptcy and subsequently proceedings are brought by the trustee to recover the assets comprised in the alleged fraudulent transfer or preference.

A transfer may be attacked as fraudulent under s. 172 of the Law of Property Act, 1925 (formerly the statute of 13 Eliz., c. 5), and in such a case it must be shown (i) that the transfer was of the whole, or substantially the whole, of the debtor's property, (ii) that the transfer was made with intent to defraud creditors, and (iii) that the transferee had notice of the debtor's fraudulent intent, or (if he had acted in good faith) that he gave no consideration for the transfer. Section 1 (1) (*b*) of the Bankruptcy Act, 1914, which says quite simply that a fraudulent conveyance, gift, delivery or transfer of his property, or part of it, by the debtor is an act of bankruptcy, is a considerable extension of the statute of Elizabeth because the court has not to consider whether the transferee knew anything about the fraud, or whether the assets transferred represented the whole, or substantially the whole, of the debtor's property; it has to consider primarily the debtor and what he has done. The obvious case of a *fraudulent transfer* under the Bankruptcy Act is one made by the debtor to defeat or delay his creditors as in *Re Slobodinsky; ex parte Moore* [1903] 2 K.B. 517, but the intention to defeat or delay creditors is not essential. If the whole or substantially the whole of the debtor's property is transferred and the necessary consequence of the transfer is to defeat or delay creditors or any of them, it is fraudulent in law and can be avoided (*Re Simms* [1930] 2 Ch. 22, where the earlier cases are reviewed). If the transfer is of part only of the debtor's property and the assets he retains are a substantial exception such as might enable him to carry on his trade or business, the transfer is valid unless actual fraud is proved (*Lomax* v. *Buxton* (1871), L.R. 6 C.P. 107; *Re Gunsbourg; ex parte Trustee* [1918–1919] B. & C.R. 108).

As to a *fraudulent preference*, it means in general terms that the debtor, insolvent at the time, made a transfer or payment or incurred an obligation in favour of a creditor with the dominant intention of giving the creditor a preference over his other creditors. If a bankruptcy petition is presented within (since the Companies Act, 1947) *six* months thereafter and the debtor is adjudged bankrupt, the preference is void against the trustee in bankruptcy. It will be seen that the question whether there has been a fraudulent preference depends, not upon the mere fact that there has been a preference, but primarily upon the state of mind of the bankrupt. The inference of fraud is negatived if the preference was given because of pressure on the bankrupt. The obvious example is the threat of an action to enforce payment, but an actual threat is not necessarily required as in *Sharp* v. *Jackson* [1899] A.C. 419, where a trustee was held not to have committed a fraudulent preference when on the eve of his bankruptcy he conveyed an estate to make good his breaches of trust with the object of shielding himself from the consequences thereof.

The onus of proof that a fraudulent preference has been given lies upon the trustee. See *Re M. Kushler, Ltd.* [1943] Ch. 248, a case which also states the principles to be applied in determining whether or not the inference of a fraudulent preference has been made out.

It should be noted that the definition of a fraudulent preference in the Bankruptcy Act has been interpreted as excluding a transfer, payment or obligation made or suffered after the presentation of the bankruptcy petition (*Re Badham; ex parte Palmer* (1893), 10 Morr. 252).

The Companies Act, 1947, s. 115 (4), amended the law relating to fraudulent preference in two further respects. First, where a transaction is void as a fraudulent preference of a person whose property is mortgaged or charged to secure a debt of the bankrupt, the person preferred is to be in the same position as if he were a surety for the debt to the extent of the charge or value of his interest. Secondly, where the fraudulent preference was made by the bankrupt to prefer a surety or guarantor, the court has power to determine questions arising between the person to whom payment was made and the surety or guarantor and to grant relief in respect thereof. For example, if the bankrupt paid off his bank overdraft with a view to prefer the guarantor of the overdraft, the bank could be called upon by the trustee to refund the money but would be entitled to recover it from the guarantor.

3. *Other Acts of Bankruptcy*

The acts of bankruptcy which remain to be mentioned are the following :—

(1) *A transfer by the debtor of his property for the benefit of his creditors generally.* This requires a conveyance or assignment in the proper sense of the term, by which the whole or substantially the whole of the debtor's property is vested in a trustee ; a declaration of trust by the debtor (unless it is the only practicable method, as in *Re Hughes ; ex parte Hughes* [1893] 1 Q.B. 595), or a mere agreement by him that his property shall be dealt with for the benefit of creditors, will not suffice (*Re Spackman ; ex parte Foley* (1890), 24 Q.B.D. 728).

(2) *If with intent to defeat or delay his creditors the debtor departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house.* There are five separate acts here, any one of which is an act of bankruptcy if done by the debtor with the intent to defeat or delay his creditors. The departure by the debtor from England or from his dwelling-house are definite acts and the intent to defeat or delay creditors must exist at the moment of departure (*Re Parr ; ex parte Osborne* (1813), 2 V. & B. 177). The three other acts are continuing acts and it is sufficient to prove the intent as existing at any time during the remaining out of England or as the case may be (*Re Alderson ; ex parte Jackson* [1895] 1 Q.B. 183).

Where the act of bankruptcy on which the receiving order is made is a continuing act, for example, when the debtor " absents himself," the trustee cannot rely on any absence which occurred more than three months before the presentation of the petition (*Re Burrows ; Official Receiver* v. *Steel* [1944] 1 Ch. 49).

The intent to defeat or delay a creditor or creditors may be proved from the debtor's statements or conduct ; usually it is the latter. Where a debtor resident in England knows that the necessary consequence of his going abroad will be to defeat or delay certain creditors, he will be held to have gone abroad with that intent. He is presumed to intend the natural consequences of his acts (*Re Finney ; ex parte Goater* (1874), 30 L.T. 620). Such a presumption was not drawn, however, where the debtor, an Englishman domiciled here, remained out of England at his own residence abroad (*Re Trench ; ex parte Brandon* (1884), 25 Ch. D. 500).

To constitute the act of bankruptcy known as " absenting himself," the debtor must intentionally be keeping away from any place where he would, in the ordinary course of his life and business, be expected to be found, or at which he had made appointments to meet a particular creditor ; and if one finds that a trader has shut up his shop without paying outstanding creditors, has left no address and no means of finding out where he has gone, there will be strong evidence of " absenting " within the Act, even if the trader is a married woman and she has left at her husband's request to live with him elsewhere (*Re Worsley ; ex parte Lambert* [1901] 1 Q.B. 309).

(3) *Seizure of the debtor's goods by execution under process in an action in any court, or in any civil proceeding in the High Court, where the goods have either been sold or held by the sheriff for twenty-one days.* The time taken up by any interpleader proceedings is not taken into account in calculating the period of twenty-one days. An act of bankruptcy arises when the sheriff has been in possession for twenty-one days, and his subsequent continuance in possession under the same seizure does not constitute a further or continuing act of bankruptcy (*Re Beeston ; ex parte Board of Trade* [1899] 1 Q.B. 626).

(4) *Where the debtor files in the court a declaration of inability to pay his debts or presents a bankruptcy petition against himself.* The declaration must be dated, signed and witnessed by a solicitor or justice of the peace, or an official receiver or registrar of the court.

(5) *Notice by the debtor to any of his creditors that he has suspended, or is about to suspend, payment of his debts.* No particular form is required and the notice need not be in writing, but it must be expressed in terms calculated to convey to the recipients of the notice the information that their debtor has suspended or is about to suspend payment (*Crook* v. *Morley* [1891] A.C. 316 ; *Re a Debtor* [1929] 1 Ch. 362). A mere declaration by the debtor that he is unable to pay his debts in full, made without something formal and deliberate about it, is not a notice of suspension (*Re Friedlander ; ex parte Oastler* (1884), 13 Q.B.D. 471).

THE PETITION

The courts exercising bankruptcy jurisdiction are the High Court for the London bankruptcy district and the county courts for the rest of the country. The petition should be presented to the proper court, which is that court within whose district the debtor had resided or carried on business during the preceding six months or for the greater part of that time. Where the debtor carried on business within the district of one court and resided within the district of another court, the proper court is that of the district where he carried on business. If the debtor is not resident in England or Wales, or his residence is unknown to the creditor, the petition should be presented to the High Court.

The conditions on which a creditor may present a petition have already been discussed. Certain other conditions, not of general application, should also be noted. Where the creditor is a firm, the petition is in the name of the firm and the partner signing for the firm should add his own signature. e.g., " AB & Co., by XY, a partner in the said firm." A petition by a registered company is in the name of the company and is presented by one of its officers authorised to do so under the company's seal, authority being either in respect of the particular petition or a general one covering an act of bankruptcy not yet committed (*Re a Debtor ; ex parte the Petitioning Creditors* v. *The Debtor* [1917] 2 K.B. 808). A secured creditor may petition, but only on any unsecured balance of the debt unless he states in his petition that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt. Non-compliance with this requirement does not mean that the creditor forfeits his security, but on the facts coming to light the receiving order will be rescinded unless the court gives leave to amend. Amendment may be allowed where the petitioner's omission was due to inadvertence or some reasonable excuse, but not where in misconception of his legal position he wrongly maintained that he held no security (*Re a Debtor* [1943] Ch. 213).

The petition must be fairly written or printed, or partly written and partly printed, and be in one of the forms contained in the Appendix to the Bankruptcy Rules. It must be verified by affidavit of the creditor. Should he be unable to verify all the statements in the petition, an additional affidavit must be filed of a person having knowledge of the facts. In the case of joint petitioners, it is not necessary that each depose as to the truth of all the statements which are within his knowledge ; it is sufficient that each statement in the petition is verified by someone within whose knowledge it is.

The following documents must be lodged with the registrar :—

(i) The petition and at least two copies, for sealing and issuing for service.

(ii) The affidavit or affidavits verifying the petition.

(iii) The official receiver's receipt for the deposit paid to cover that official's costs and expenses.

(iv) If the petition is against a firm in the firm name, a separate statement of the names and addresses of the parties as they appear on the register under the Registration of Business Names Act, 1916.

If the documents are in order, the registrar appoints a time and place for the hearing of the petition and notice thereof is written on the petition and copies, the latter being sealed and issued to the petitioner. Assuming service is effected (and the provisions regarding service are similar to those governing service of a bankruptcy notice : see *ante*, p. 716), the debtor has to decide whether he will oppose the petition. If he decides to do so, he should file a notice with the registrar, specifying the statements which he intends to deny or dispute, and send a copy to the petitioning creditor and his solicitor, if known, at least three days before the date fixed for hearing.

I. H. C.

Costs

ADMIRALTY—II

We discussed in our last article some of the salient features of the law and practice with regard to Admiralty actions, and we now propose to consider some of the allowances which are customarily made.

One of the first points which strike one in regard to Admiralty costs is the fact that the allowances that are normally made are on a somewhat more generous scale than in other divisions of the High Court. It will be recalled from our previous articles that the cost of abortive negotiations for a settlement of the action are not normally allowed either in the King's Bench Division or in the Chancery Division. In the Admiralty Division, however, all costs in relation to negotiations for a settlement of the matter, whether those negotiations are abortive or fruitful, are normally allowed, and this is an important point, for in Admiralty cases there is a good deal of opportunity for negotiated settlements. Thus, there may be negotiations for a settlement of the question of liability and, after that, there may be negotiations for a settlement of the respective claims, in cases where both vessels are held to blame, whether equally or in varying degrees. In each instance, the whole of the costs of the negotiations will normally be allowed, whatever the outcome thereof.

Moreover, when a settlement of an Admiralty action has been arranged, whether in respect of the question of liability or in respect of the claims, an agreement of settlement is signed and filed in court, and there is usually no necessity, as there is in the case of a settlement, say, of a King's Bench action, for a summons to stay to be taken out so that an order of the court may be obtained embodying the terms of settlement. Such an agreement in Admiralty matters is, when filed, equivalent to an order of the court (see R.S.C., Ord. 52, r. 23). No item will be found in Appendix N specifically relating to such procedure, but the normal allowance for drawing, engrossing and attending on the adverse solicitors and obtaining their signatures to such an agreement is 6s. 8d. A copy of the agreement is allowed for the adverse solicitors at 4s. per folio, whilst 6s. 8d. is allowed for attending to file the agreement in the Registry. The court fee is 10s. If the agreement exceeds three folios in length, which is rare, then an allowance of 1s. 4d. will be made for drawing and engrossing it, together with a further fee of 6s. 8d. for attending on the adverse solicitor to obtain his signature thereto. It will, of course, be appreciated that these and any subsequent fees mentioned in this article are basic fees, to which the increase of 50 per cent., authorised by R.S.C., Ord. 65, rr. 10 (2) (*d*) and 10A should be added.

We have, of course, so far taken the subject in inverse order and we will now go back to the commencement of an action. In connection with the issue of the writ there will be additional allowances over and above those authorised by Appendix N in respect of King's Bench actions. These additional allowances arise out of the practice specifically relating to the Admiralty Division. Thus, in regard to the issue of a writ, it will be recalled that the fee of 6s. 8d. authorised by Appendix N is intended to cover, however inadequately, the work involved in preparing the writ, making the requisite number of copies and attending at the writ office to issue. In addition, a further copy is allowed for service. In the Admiralty Division a still further copy of the writ, at 4d. per folio, is allowed for filing in the Admiralty Registry, and a fee of 6s. 8d. is allowed for attending in the registry and filing the copy.

The same fee under Item No. 28 of Appendix N is allowed for service of the writ, whether the writ is issued in the Admiralty or the King's Bench or any other division, but in addition, in Admiralty actions where it is applicable, an attendance at 6s. 8d. will be allowed, before the writ is issued, for obtaining from the defendants' solicitors an undertaking to accept service, appear and put in bail to prevent the arrest of the defendants' vessel.

It may be, however, that the defendants have not had time to appoint solicitors, and in order to prevent their vessel from leaving the jurisdiction of the High Court, it is necessary for the plaintiffs to arrest her. This is achieved by applying to the Admiralty Registry for a warrant of arrest. The application is supported by a formal affidavit for which the normal charges are allowed, filling up and filing a præcipe for which 6s. 8d. is allowed, and attending to obtain the warrant from the registry and attending on the Admiralty Marshal with the warrant.

Following this there is allowed an attendance on the plaintiffs to obtain instructions as to the amount of bail required to cover the anticipated claim and costs, and a notice, for which the usual fee is 4s.. to the adverse solicitors demanding bail in the amount required by the plaintiffs. In due time the names of the proposed sureties for bail are provided by the defendants and an allowance of 6s. 8d., which may be increased if the circumstances warrant, is granted to the plaintiffs' solicitors for making inquiries as to the sufficiency of the proposed sureties. A fee of 3s. 4d. is allowed for perusing the notice that bail in the required sum has been executed, and a further fee of 6s. 8d. may be charged for attending in the registry and searching to confirm that the bond has been filed.

Up to this point the defendants' solicitors' charges will follow those of the plaintiffs, in regard to the special items mentioned above, but in addition they will be allowed the usual fees under Appendix N for drawing the bail bond, namely, 6s. 8d. for instructions and 1s. 4d. for drawing and

engrossing, and for the affidavits of the sureties, of which there are normally two, attending on the sureties with a commissioner when the bond is executed and the affidavits are sworn, and for attending in the registry and filing the bond and affidavit, and giving notice that the bond has been executed to the plaintiffs' solicitors. Further, there is recoverable by the defendants' solicitors as an element in the bill of costs, where the defendants are awarded the costs of the action against the plaintiffs, the commission paid to the sureties for executing the bail bond. The bail commission authorised is such a sum as is actually paid not exceeding £1 per cent. of the amount secured by the bond (see R.S.C., Ord. 12, r. 21A). Notice in particular that the order states that the commission allowed is a sum *not exceeding* £1 per cent., and if, therefore, something less than £1 per cent. is paid then only the lower amount can be recovered. This is an important point for the plaintiffs' solicitor to watch and he should always insist on production of the vouchers for the payment, because it often happens, when bail is given by a bank, that the amount of the commission charged by the bank is less than £1 per cent., particularly where the duration of the liability is short. In this respect it is perhaps not out of place to notice that the limit is still £1 per cent., no matter how long the liability of the sureties may be outstanding.

The remaining charges in an Admiralty bill of costs in a damage action follow much on the same lines as the charges in a bill of costs in an action in any other division of the High Court, with one notable exception, namely, that the pleadings in a collision damage action include a document called a Preliminary Act. This is a document giving various particulars in connection with the time and circumstances of the collision, the force of the wind and the weather conditions prevailing at the time of the casualty, which must be prepared, sealed up and filed by each party before any pleadings are delivered (see Ord. 19, r. 28). A fee of 6s. 8d. is allowed as instructions, and 5s. for drawing this document, and a fee of one guinea is normally allowed to counsel to settle it; and it is useful to notice that it was decided in the case of *The Channel Queen* (1928), 44 T.L.R. 505, that the solicitor is entitled to a reasonable fee for obtaining the evidence necessary to enable him to prepare the document. It follows, therefore, that in collision damage cases, although the action may be settled immediately after the writ is issued, a substantial fee in lieu of instructions for brief may be allowed, particularly where the solicitor has had to incur the trouble and expense of a journey in order to obtain the evidence.

When the action is set down six copies of the pleadings will be lodged, instead of the customary two copies in the King's Bench Division, whilst instead of the plaintiffs supplying a copy of the whole of the disclosed and agreed documents for the use of the court, as in the King's Bench Division, each side will supply the court with three copies of the *other* side's documents.

There we must leave the matter, but we will consider the remaining points with regard to Admiralty costs in our next article in this series.

* * * * *

REGISTERED LAND

It has been suggested that the paragraph on p. 607 of the current volume commencing with the words: "Paragraph 1 (*k*) also provides . . ." and ending on p. 608 with the words ". . . relating to registered land" may give rise to misunderstanding. Paragraph 1 (*k*) is, of course, a translation into the terms of registered land conveyancing of the provisions of r. 3 of the rules applicable to Sched. I to the General Order of 1882, both of which contemplate a mortgage or charge in isolation. There is no counterpart in the Registered Land Order to the provisions of r. 6 of the rules applicable to Sched. I to the 1882 Order, which rule deals with a contemporaneous conveyance and mortgage of the same property. In the case of a contemporaneous transfer and charge of registered land, therefore, it follows that in addition to the scale fee allowed under para. 1 (*k*) the solicitor would, of course, also be entitled to the full scale fee as acting for the transferee.

J. L. R. R.

A Conveyancer's Diary

WHEN IS A WILL MADE?

THIS question is prompted by the decision in *Re Taylor's Will Trusts* (reported at p. 670, *supra*). In that case a contingent class of children were entitled, subject to a life interest, to an annuity fund created by the will, dated in 1924, of a testator who died in 1929. In 1926 the testator made a codicil by which he confirmed his will. The trustees were asked to exercise the statutory power of advancement in favour of the children, and the question was whether they were entitled to do so. Section 32 (3) of the Trustee Act, 1925, provides that that section (which confers the power in question upon all trustees except, in effect, trustees holding capital money within the meaning of the Settled Land Act, 1925) is not to apply to trusts constituted or created before 1926. Wynn Parry, J., held that (i) in the light of the reasoning of the majority of the House of Lords in *Berkeley* v. *Berkeley* [1946] A.C. 555, the trusts constituted by the will took effect not in 1924, when the will was executed, but in 1929, when the testator died; and (ii) even if that were not so, there was no ground for excluding the application to this case of the general rule that a codicil which confirms a will brings the will up to the date of the codicil.

This decision casts no direct light on the question when a will is made. *Berkeley* v. *Berkeley*, *supra*, is more directly in point, although in that case also the problem was a slightly different one. Section 25 (1) of the Finance Act, 1941, introduced a statutory modification into "any provision [for the payment of a tax-free annuity] however worded . . . being a provision which (*a*) is contained in . . . any will or codicil . . . and (*b*) was made before September 3, 1939; and (*c*) has not been varied" since that date. The will under consideration had been executed in 1936 and confirmed by a codicil dated in 1940. The testator died in 1942, and those whose interest it was to argue that the statutory modification (which concerned the incidence of tax in the case of certain tax-free benefits) did apply to certain benefits given by the will contended that the relevant provisions were "made" when the will was executed. This view was rejected by the House of Lords, who held that the expression "provision" in s. 25 (1) meant, not the words in the will which defined the benefit, but the benefit actually conferred —and on this footing provision was "made" when the will took effect, i.e., on the testator's death.

It was not therefore necessary to decide, in so many words, when a will is "made," but at least two of the learned lords expressed the view that, had it been necessary for the purposes

of the decision, they would have been prepared to hold that a will is made when it comes into operation.

To these cases must be added the decision in *Re Heath's Will Trusts* [1949] Ch. 170, which again was concerned with a similar, but not identical, problem. The Law Reform (Married Women and Tortfeasors) Act, 1935, by s. 2 (1) rendered inoperative any restraint upon anticipation imposed on a married woman in the future, with a saving in favour of any restraint attached by virtue of any provision contained in any instrument executed before the 1st January, 1936. A will containing such a restraint was executed before, and confirmed by codicils executed after, that date, and it was argued, on the strength particularly of certain observations of Lord Porter in *Berkeley* v. *Berkeley*, *supra*, that the effect of the codicils had been to incorporate and therefore, as they had been executed after the relevant date, vitiate the restraint in question. But the authorities on the republication of wills by codicils are not very clear, and at any rate where there is a testamentary gift which is valid at the date of the will which contains it, the mere republication of the will by a codicil cannot, apparently, invalidate that gift. Harman, J., followed this principle and held that the restraint, contained in a will executed before the relevant date, was unaffected by the subsequent republication of the will.

It is not easy to extract any guidance, much less any principle of universal application, from these cases, but their general tendency (and especially some of the *dicta* in *Berkeley* v. *Berkeley*, *supra*) serves to show that a will is "made" at the time when it comes into operation and not at the time when it is executed. *Re Heath*, *supra*, is not out of line with this view, since it was concerned solely with the effect of republication, while this aspect of the question was only incidental in the other decisions. Where, therefore, it is a matter of some importance to ascertain when a will is made (as it is in connection with adopted children and their rights upon testate succession, as to which see p. 173, *supra*), this question should not be left in doubt. What action is necessary in any given case must, however, depend on the circumstances.

* * * * *

A correspondent has referred me to the criticism of the decision in *Re Ballard's Conveyance* [1937] Ch. 473, which appeared in this Diary at p. 636, *supra*, and has expressed surprise that I did not mention the decision in ***Drake*** v. *Gray* [1936] Ch. 451; 155 L.T. 145, which, in this correspondent's view, indicates that the former case was wrongly decided. I am certainly pleased to give publicity to this suggestion, but with all respect I cannot share this view.

In *Drake* v. *Gray* the covenants in question were imposed in conveyances made in pursuance of a partition scheme, and the relevant clause of the conveyances (which were in similar form) was in the following terms: "The trustees [i.e., the conveying parties] do hereby for themselves and their assigns to the intent and so that the covenants hereinafter contained shall be binding on the lands and premises hereby assured into whosesoever hands the same may come . . . covenant with [the parties to whom the partitioned premises were conveyed] and other the owners or owner for the time being of the remaining hereditaments so agreed to be partitioned . . . and not hereby assured that the trustees their heirs and assigns will at all times hereafter perform . . . the stipulations set out in the schedule hereto . . ." The plaintiff and the defendant were successors in title, respectively, to persons who took separate parts of the partitioned properties under this scheme and the question was whether the defendant was bound by one of the restrictions scheduled to the original conveyance to her predecessor in title or not.

The question was argued and treated in all the judgments as a pure question of construction. It was admitted that there was no question of a building scheme, and, in the absence of an express assignment of the benefit of the covenant to the plaintiff, that the plaintiff could only succeed in enforcing the covenant if he could show, on the principle of *Renals* v. *Cowlishaw* (1878), 9 Ch. D. 125, that when the restriction was originally imposed it was intended to enure to the benefit of the particular land which he owned, i.e., that on its original imposition it had been intended to benefit every portion of the land for the benefit of which it had been taken. Luxmoore, J. (as he then was), said ([1936] Ch., at p. 455) that to succeed the plaintiff had to show that, on the true construction of the original conveyance to his predecessor in title, the benefit of the restriction was intended to enure to each portion of the land comprised in that conveyance. He gave judgment for the plaintiff. On appeal, Slesser, L.J., referred expressly to the absence from that conveyance of the words "or any part thereof," but considered that such words were not the only words apt to show that the benefit of a restriction was intended to enure for the benefit of a piece of land and of every part thereof; and on the construction of the whole conveyance he concluded that the benefit of the restriction had been annexed to any part of the land in question. Romer and Greene, L.JJ. (as they then were), agreed with this construction, and both pointed out that the circumstances were very special.

Contrasted with this, the decision in *Re Ballard's Conveyance* was not solely a decision on the construction of a particular document: it was a decision on a point of law, enunciating a rule of law. Whether the rule was applicable or not, once it had been propounded, was doubtless a question of construction; but essentially the two cases considered here are distinct, and I do not think the earlier contains any indication of the correctness or otherwise of the later.

"A B C"

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of THE SOLICITORS' JOURNAL*]*

Preliminary Enquiries on Town and Country Planning

Sir,—As publishers of the form of Preliminary Enquiries (Con. 29) criticised by Mr. I. S. Wickenden in your issue of the 11th November, we would point out that his criticisms appear to be based on a printing of the form which has since been altered in several respects. For example, he suggests a question as to claims for compensation under Pt. VI of the Town and Country Planning Act. This is now covered by question 16 (*g*).

No two draftsmen are likely to use exactly the same wording for questions which may be the same in substance. What really matters is that the questions should be so worded as to lead to answers which are as complete and helpful as possible. The form, which was first printed in 1929, has since become extensively used by the profession. We regularly receive from users criticisms of, and suggestions for the improvement of, the form. This correspondence is considered by the draftsman of the form on its frequent reprintings, and such revision is made as he considers desirable. The present wording of the Enquiries must, therefore, be regarded as the result of a considerable accumulated experience in their use.

This is far from saying that we regard them as having reached perfection, and we shall welcome your readers' views as to the effectiveness in practice of the present wording.

THE SOLICITORS' LAW STATIONERY SOCIETY, LTD.

London, W.C.2.

Landlord and Tenant Notebook

IMPLIED RESERVATION OF ADVERTISEMENT RIGHTS

BOWSPRITS; coal dust; a Virginia creeper; a goat—some of these are among the "apparent signs of servitude" (an expression used in Gale on Easements) which might have been mentioned in the course of *Re Webb's Lease; Sandom* v. *Webb* (1950), 94 SOL. J. 704. The dispute in that case was between a tenant holding a twenty-one-year lease of the upper floors of a building and his landlord who carried on a butcher's and grocery and provision business on the ground floor. When the lease was granted, two advertisements were, and had for some fifteen years been, displayed on the outside walls of the upper part; the one concerned the landlord's business, the other a particular brand of matches. The question was what implied right, if any, had the landlord in respect of those advertisements; it was held that he had a right to keep them there, but nothing else (e.g., he had no right to change them).

A perusal of the authorities suggests that in cases of alleged implied easements and reservations the tendency is to lay more and more emphasis on the intention of the parties, to be inferred, *inter alia*, from the disposition of the property concerned.

Anyone who claims a right of this kind is, of course, face to face with the rule that a grantor cannot reserve otherwise than by express words. Perhaps the first definite statement of the rule in question was made by Lord Westbury, L.C., in *Suffield* v. *Brown* (1864), 4 De G.J. & S. 185. In that case a successor in title of the purchaser of a coal wharf proposed building in a way which would prevent bowsprits belonging to vessels in an adjoining dock projecting over his wharf. His predecessor had bought the wharf from the owner of the dock, and it would be obvious that bowsprits must so project from time to time. Nevertheless, it was held that, the vendor having failed to reserve any right expressly, his successors were unable to claim it. The decision was approved in what became the leading case on the subject, *Wheeldon* v. *Burrows* (1878), 12 Ch. D. 31 (C.A.), which concerned a claim to a flow of light. The plaintiff, widow and devisee of the purchaser of some "eligible building land," adjoining a silk mill which had been sold by the same vendor to the defendant a few months later, had put up hoardings which obstructed the access of light to the windows of the mill; and the defendant had knocked the hoardings down. No reservation of a right to light had been made in the conveyance to the plaintiff's husband, and it was held that the defendant had acquired none. The proposition "if the grantor intends to reserve any right over the tenement granted, it is his duty to reserve it expressly by grant" was firmly established by this decision, and has been applied in a variety of circumstances since; e.g., when a mortgage failed to reserve a right of way which the mortgagor had habitually used (*Taws* v. *Knowles* [1891] 2 Q.B. 564).

When, notwithstanding the absence of an express reservation or easement, or of "necessity," the courts have recognised the existence of such, it has always been a case of giving effect to common intention evidenced by circumstances existing at the date of the grant. The circumstances may be purely physical ones, such as the layout and nature of the properties; and they may relate to the occupation followed by one party or both parties. In *Hall* v. *Lund* (1863), 1 H. & C. 676, a tenant, described in his lease as a bleacher, took a mill described as late in the occupation of P (who had just surrendered a lease); the former tenant had for many years discharged effluent into a stream which passed through his premises and then through the landlord's. It was held that the landlord had impliedly granted the new tenant the right so to foul the water.

Jones v. *Pritchard* [1908] 1 Ch. 630 also showed the importance of intention and of the disposition of the subject-matter. The plaintiff's predecessor in title had built a house with some flues in one outer wall which were useless for the purposes of that house, but could be used for those of a house which might be erected on the adjoining site, then vacant. He sold the outer half of the wall to the defendant who was about to build on that site and who did build a house incorporating the half-wall with its flues and fireplaces. Some years after the plaintiff had bought the first house a defect developed in a flue connected with the defendant's dining room, with the result that smoke found its way through cracks in the surrounding masonry into the plaintiff's drawing room, these cracks being due to subsidence of the defendant's house for which he was not to blame. In coming to the conclusion that the defendant's easement was "the right to allow smoke from his fireplace to pass into the flue connected therewith, notwithstanding that at any point of its passage up the flue it might pass from the defendant's moiety into the plaintiff's moiety of the flue," Parker, J., referred again and again to what was intended, to common intention, to the contemplation of the parties; and his decision was that the defendant was exercising his rights "fairly and reasonably in the manner in which he was intended to exercise them when the easement was granted."

The importance of the sequence of events was emphasised by *Pwllbach Colliery Co., Ltd.* v. *Woodman* [1915] A.C. 634. The plaintiff took a lease of some land in 1909. The grant was "subject to all rights and easements belonging to any adjoining or neighbouring property." Adjoining property had been let by the same landlord two years earlier, the lessees being empowered, *inter alia*, to carry on the trades of coke manufacturers and smelters; and about one year earlier the lessees had sub-let part of their land to the defendants, authorising them to maintain, *inter alia*, screens, tips and other apparatus for the purposes of their colliery works. The plaintiff built a slaughterhouse and sausage factory as soon as his lease started, but it was not till 1912 that the defendants erected screening plant on their land, some 130 yards away. Their plea that he knew about the powers failed; distinguishing the case from *Hall* v. *Lund, supra*, Lord Atkinson pointed out that the works causing the nuisance had been erected during the term; it was the state of the property and the mode in which it had been enjoyed at the time of the grant that mattered.

In *Simpson* v. *Weber* (1925), 41 T.L.R. 302, it appeared that since 1912 a small Virginia creeper, growing in the garden of one house, had climbed up and adhered to the wall of the house next door, which belonged to the same owner. A gatepost had also at some time been attached to the wall before the plaintiff bought the house with the wall in 1918. The defendant bought the other in 1923. The Divisional Court, allowing an appeal, rejected arguments that there was no evidence of intention; Salter, J., considered the easement an obvious one as there was no evidence that creeper and gatepost should not stay. It was by reference to this authority that Danckwerts, J., decided *Re Webb's Lease* in favour of the tenant.

Mention might also have been made of the exhaustive review given by Scrutton, L.J., and his colleagues in *Liddiard* v. *Waldron* [1934] 1 K.B. 435. The case concerned two adjoining houses and a paved path behind them. They had originally been let to different weekly tenants. The tenant of the one had often used the part of the path behind the other without objection being made, such user continuing after the sale of the other which expressly reserved a right to use the path for the purposes of access to a well, until the plaintiff bought the first one. An intermediate purchaser had *asked* permission to use the path, saying that he wanted this so that he could " bring in his coals, take out his dust, take out his bicycle, and the climax came in a claim to take out his goat," but this was a claim for permission, not a claim as of right. This circumstance and the limited terms of the express reservation were held to negative the existence of an all-purposes right of way.

In the course of his judgment, Scrutton, L.J., when referring to the two tenancies, the terms of which were not given in evidence, remarked : " I confess that the idea of a weekly tenant wandering about with a series of easements when he can be got rid of by a week's notice is a thing of which the law will not take much notice." The term in *Re Webb's Lease* was a twenty-one-year one and the issue concerned a reservation, but I submit that, in view of the importance attached to disposition of premises, some distinction may now be drawn between cases in which tenements are severed by sale and cases in which the grantee becomes temporary occupier and the grantor retains a reversion. Both prospective purchasers and prospective tenants are in the habit of examining the layout of what they are about to acquire, but it seems plausible that the presence of a bowsprit above or a creeper adhering to the subject-matter may influence them rather differently.

R. P.

HERE AND THERE

THE LORDS' WORK

OPENING the legal year with twenty-two cases in its list (six of them from the Court of Session in Edinburgh), the House of Lords has so far got through the hearing of five. The " 360-day baby " is safely delivered into the lap of the gods. The way thither has so far cost him four and a quarter years of his earthly pilgrimage, since he emerged into this contentious and sceptical world, bringing with him a problem which has twice perplexed the Court of Appeal. There seems to be a growing habit lately of coming up for second helpings of appeals. The great *Diplock* case has twice climbed the steep stair to the House of Lords and so has *Raleigh Cycle Co., Ltd.* v. *H. Miller & Co., Ltd.* Both have had their second hearings during these sittings and have passed into the realm of reserved judgments. So has *Paris* v. *Stepney Borough Council*, in which their lordships must weigh the subtle distinctions between " risk of greater damage " and " greater risk of damage " in a negligence case. Let us hope that by the time next year's cricket season opens *Bolton* v. *Stone* will have been heard and determined and so that cricket clubs and those who dwell beside them or frequent the roads adjoining them will know on the highest legal authority precisely what legal rights and liabilities are set in motion when some mighty man at the wicket drives the ball clean out of the ground. Must any citizen whose skull the projectile may happen to crack solace himself with the reflection that he is a victim of a most improbable combination of circumstances? Or will he achieve a more substantial solatium? Another task lying ready to their lordships' hands is the very last petition of right, the case of the sergeant who, while on active service in Egypt during the war, discovered a very profitable line in lorry jumping on trucks loaded with prohibited goods. So effective was his mere presence and so high the prestige of His Majesty's battledress in diverting the attention of the police from the contents that this not very arduous service was remunerated to the tune of several thousands of pounds. After his conviction by court martial of conduct prejudicial to good order and military discipline, the Crown impounded his banking account, which by petition of right he is now seeking to recover. (If all this had happened after the coming into force of the Crown Proceedings Act, 1947, he could have dispensed with the formality of the Attorney-General's " fiat.") The reaction of the layman, I find, is to wonder why the Crown should have taken the line it did. Lawyers can find the reasons lucidly stated by Asquith, L.J., in the Court of Appeal, but one would have thought that (though, of course, it has nothing at all to do with the legal position about to be decided) the layman, alway sopen to that insidious *argumentum ad hominem*, might have said to himself that a net tax-free profit of about £13,000, earned at a cost of a mere two years' imprisonment, would be something like a sound business proposition. The appeal could probably have started by now had not the Attorney-General, who is to appear for the Crown, developed signs of a strained heart which forced him to spare himself in his work for a little while. With the Solicitor-General out of call beyond the broad Atlantic, he has, for the moment, no " stand-in." Not so long ago he was having trouble with a " slipped disc " in his spine. In many ways his has been a back-breaking job.

STILL ALIVE

WHILE the House of Lords is thus revelling in the assurance of full employment the Judicial Committee of the Privy Council, though no longer at the peak of its production, still manages to keep the wheels turning. Since the abolition of appeals from Canada only affects cases in which the writ was issued after the date it took effect, that particular source is not likely to dry up for a couple of years at least. Meanwhile Australia is loyally supporting this particular branch of the export trade. It has sent up a lorry case of its own to match the one they have in the Lords. A visiting team of three Australian King's Counsel and two juniors have come to London to put it through its tests. The truck, loaded with 640 dozen bottles of beer, started its long journey to Downing Street with what now seems a relatively short trip from South Australia through Victoria to New South Wales. The driver was in consequence convicted of having driven in Victoria a truck not registered in Victoria. Simple enough apparently, but the constitutional implications turn out to be second only to those of the great Australian bank case. The constitution guarantees absolute free trade and commerce among the States of Australia. Have the Victorian transport regulations violated this principle? The High Court has divided four to two for upholding the conviction. What now?

RICHARD ROE.

Sir Henry Dixon Kimber, solicitor, of Lombard Street, E.C.4, left £79,868.

Mr. E. E. Robb, solicitor, of St. James's Street, S.W.1, left £56,602.

Mr. W. B. Tonkin, solicitor, of Melksham, left £17,050 (£16,664 net). He left £100 each to five Melksham churches.

Mr. G. A. Barton, retired solicitor, of Shanklin, formerly of Birmingham, left £22,212.

PRACTICAL CONVEYANCING—XXIII

Notice to Purchaser of Registered Land

The inconvenience of the Law of Property Act, 1925, s. 198, as interpreted by Eve, J., in *Re Forsey and Hollebone's Contract* [1927] 2 Ch. 379, has been the subject of comment in these notes on several occasions recently. Readers will remember that the effect is to give notice to a prospective purchaser of any matter which is registered as a land charge. In most cases the purchaser is not prejudiced because he can require the vendor to remove the charge unless the contract requires the purchaser to take subject to it. He may be seriously prejudiced, however, if the charge is such that the vendor is unable to remove it.

A learned correspondent has drawn the writer's attention to the fact that the position is quite different where the land is registered. The Land Charges Act, 1925, does not apply to registered land and so the wide terms of the Law of Property Act, 1925, s. 198, do not affect the issue. Where, for instance, the charges register lists restrictive covenants affecting the property there is nothing to suggest that a prospective purchaser is thereby given notice of them. By the Land Registration Act, 1925, s. 50 (2), where notice of a restrictive covenant is entered on the register " the proprietor of the land and the persons deriving title under him " are deemed to be affected with notice. The wording of this subsection is very much narrower than that of s. 198 (1) and it would appear that an intending purchaser is *not* a person deriving title under the proprietor. Dr. Harold Potter seems to hold this opinion (see Key and Elphinstone, vol. III, pp. 354, 357, 361, 384). The result is that registration is *not* notice to the intending purchaser and so there is no doubt but that he can rescind the contract if he finds the covenants on searching before completion. The writer is not able to find any other provision in the Land Registration Act, 1925, which would give a prospective purchaser notice of an adverse interest, and so it appears to follow that in the case of registered land the only search needed before contract is a local land charges search.

Copies of Ordnance Maps

The *Law Society's Gazette* for November, 1950, has drawn attention once more to the necessity for a licence before one may make copies from ordnance survey maps. It is so often convenient to make such copies that there is a danger of forgetting the Crown copyright. Licences for reproduction by hand tracings or by mechanical means, at a small annual fee, can be obtained from the Director-General, Ordnance Survey. At the same time perhaps one might mention how essential it is to state the edition of the ordnance survey with which one is concerned. Failure to do so is likely to cause confusion in the future.

Preliminary Enquiries and Searches

This subject was discussed at some length last week and the writer does not wish to return to it now. Nevertheless, it is interesting to note by way of postscript that the recommendations of the Bristol Law Society were considered at the annual conference of The Law Society (see 94 Sol. J. 643), and the majority of members present agreed in principle with the Bristol views.

J. G. S.

POINTS IN PRACTICE

Questions from solicitors who are REGISTERED ANNUAL SUBSCRIBERS are answered without charge, on the understanding that neither the Proprietors nor the Editor, nor any member of the staff, are responsible for the correctness of the replies given or for any steps taken in consequence thereof. All questions must be typewritten (in duplicate), addressed to the Editorial Department, 88-90, Chancery Lane, W.C.2, and contain the name and address of the subscriber, and a stamped addressed envelope.

Builder's Bill in Excess of Estimate

Q. X is a builder who undertakes to do some work for Y. According to X no estimate is submitted, X stating he will do the work as economically as possible. According to Y, X submits an estimate of £180. In due course the work is completed and X sends in a bill for £280. X interviews Y with his account and Y pays him £220, saying that he will make a further payment at a later date. Y then repudiates liability on the grounds that the estimate was for £180 only. Can X recover the balance of his account, even if the court is satisfied that the estimate for £180 was in fact submitted, by claiming that the payment of £220 constituted evidence of a fresh contract by Y to pay the whole account ?

A. Even if there was a new agreement by Y to pay more than the contract price there was no consideration for his promise, and he cannot be made responsible for further payment on that account. The sole issue is whether the original agreement was that X should do the work for £180 or not. Although the subsequent payment by Y of £220 cannot be pleaded as a new agreement it will, we think, be important evidence to show that the original contract price was not £180.

Rent Acts—Settled Land—Possession

Q. A testatrix who died in 1929 by her will devised her freehold house and furniture " that it shall be a home for my daughters A and B for such time as they remain unprovided for by marriage or for such period as they desire or need it " conditionally upon their allowing two other daughters if they needed it to share it, and she appointed C her executor. She further directed that in the event of the property being no longer required for the purposes stated it should be sold and the proceeds divided between her surviving daughters. About twelve years ago the house was let to a tenant at a rent of £6 13s. 6d. a month inclusive. This tenant still occupies the premises, and following a notice to quit claims the protection of the Rent Restrictions Acts. A and B are spinsters aged seventy-two and seventy respectively, carrying on business in a shop and living in the flat above. They wish to retire and live in the house in question. Could proceedings be taken by the executor for possession on the grounds that the premises are required for the occupation of the two daughters, or could proceedings be taken in the names of the two daughters ? The other two daughters are married and do not want to live at the premises but would support any action by their sisters.

A. A personal representative who has no beneficial interest in the house cannot claim possession on the ground that it is required for occupation as a residence by a beneficiary (*Sharpe* v. *Nicholls* [1945] K.B. 382) and, so long as the legal estate and the beneficial interest are in separate hands it seems that no one can apply (*Parker* v. *Rosenberg* [1947] K.B. 371). A and B appear to be tenants for life of the house, which is settled land, and as such are entitled to the legal estate, which should long since have been vested in them as joint tenants (Settled Land Act, 1925, s. 19 (2)). When the executor has executed the necessary vesting assent in favour of A and B a new notice to quit should be served by them, since it is doubtful if that served by the executor is valid, the long interval since the death having raised the possibility that he is *functus officio*. We think that then A and B can take proceedings for possession under para. (*h*) of the First Schedule to the Rent and Mortgage Interest Restrictions Act, 1933.

Entertainments Duty

Q. The proprietor of an exhibition agreed with one of the exhibitors that the exhibitor could issue as many tickets as he liked to his members, and that the exhibitor would pay the proprietor the sum of sixpence on each ticket presented at the turnstile. The exhibitor in fact advertised to his members that tickets were on sale at the price of one shilling each, and as the result of this advertising a large number were sold ; some of the purchasing members attended the exhibition, and their tickets were presented at the turnstile. Can the proprietor or the Commissioners properly demand entertainments duty based on the sale of tickets at the price of one shilling ?

A. If the proprietor received only sixpence for each ticket we do not think that he is responsible for the higher rate of admission which the exhibitor received. If, however, the proprietor actually received one shilling we think that he has adopted the conduct of the exhibitor and is a person on whose behalf that sum was received (see Halsbury's *Laws of England*, vol. 28, p. 352).

NOTES OF CASES

COURT OF APPEAL

LIBEL: INTERROGATORIES

Adams *v.* Sunday Pictorial Newspapers (1920), Ltd., and Another

Somervell and Denning, L.JJ. 6th October, 1950

Appeal from Parker, J., in chambers.

The plaintiff claimed damages for libel for words which the defendants admitted printing and publishing, and which he alleged meant and were understood to mean that he was an unpatriotic man who deliberately misrepresented to anti-British newspapers and politicians in the United States of America the number and plight of unemployed persons in Great Britain, well knowing that he might thereby cause Marshall Aid to cease or to diminish and that this would bring about widespread distress and increase unemployment in this country, and that he was, therefore, utterly unfit to continue in his office as honorary secretary of a certain unemployed workers' committee, or to associate with right-thinking people. The defendants pleaded fair comment. The plaintiff sought to administer a number of interrogatories, including No. 4: "When you published the words complained of . . . did you believe" them to be true? Number 5 asked what steps the defendants took to ascertain whether the expressions of opinion were founded on facts. Parker, J., affirming Master Horridge, disallowed all the interrogatories except No. 4, on the ground that they contravened R.S.C., Ord. 31, r. 1A (see S.I. 1949 No. 761 (L7)) because they concerned the defendants' sources of information or grounds of belief.

SOMERVELL, L.J., having given reasons for holding the various interrogatories to be contrary to r. 1A, said that the plaintiff relied on the fact that the issue of express malice was raised by the reply, and argued that, if the defendants to interrogatory No. 5 answered "No: we did not take any steps," that would or might assist the plaintiff in showing malice. That possibility did not help the court in deciding whether the interrogatory came within the class prohibited by the rule, since it would exist also in the case of an interrogatory which undoubtedly was prohibited. If the interrogatory were: "What were your sources of information?" and the answer were: "I had none," that answer would assist the plaintiff; but such an interrogatory, it is plain, was prohibited by the rule.

DENNING, L.J., agreeing, said that it was argued, quite rightly, that r. 1A did not in express terms disallow interrogatories as to belief; and for that reason the master and the judge did allow interrogatory No. 4. But he (his lordship) doubted very much whether such an interrogatory helped at all. It might properly be disallowed because of r. 2, whereby "Leave shall be given as to such only of the interrogatories as shall be considered necessary either for disposing fairly of the cause or matter or for saving costs." It seemed to him that, since the new rule, all these common-form interrogatories had gone. The appeal was in effect an attempt to re-establish them. Appeal dismissed.

APPEARANCES: *Cartwright Sharp*, K.C., and *R. L. Travers* (*Robinson & Bradley*); *H. Milmo* (*Godden, Holme & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROCEDURE: INTERROGATORIES BETWEEN CO-DEFENDANTS

Clayson *v.* Rolls-Royce, Ltd., and Others

Somervell and Denning, L.JJ. 16th October, 1950

Appeal from Parker, J., in chambers.

The plaintiff was employed by the first defendants in their factory. She received injury there from a defective lift, and sued her employers for damages for breach of statutory duty and negligence. By their defence the employers alleged that there was a contract between themselves and a company for the maintenance of the lift, and that that company had failed to perform that contract. The plaintiff then added that company as second defendants. Neither defendant issued a third-party notice against the other under R.S.C., Ord. 16A, r. 1, or claimed contribution or indemnity under r. 12. The second defendants were refused leave by Parker, J., affirming the master, to administer twenty-three interrogatories to the defendant employers, because, he held, they were not "opposite parties" within the meaning of R.S.C., Ord. 31, r. 1. The second defendants appealed.

SOMERVELL, L.J., said that the second defendants contended that the decision of Parker, J., was wrong by reason of s. 6 of the Law Reform (Married Women and Tortfeasors) Act, 1935, and the decision in *Croston* v. *Vaughan* [1938] 1 K.B. 540. The practice adopted by Porter, J., in that case had, it appeared, been generally followed, and it was unusual for a party to give notice under Ord. 16A, r. 12, claiming contribution or an indemnity from the other defendant. Sometimes the notice was given but more often it was not, it being recognised, perhaps, that, if both defendants were to be held to blame, the procedure adopted in *Croston* v. *Vaughan*, *supra*, would be available. In that case, at the end of the proceedings, Porter, J., apportioned the blame between the two defendants for the purpose of fixing the contribution as between the two joint tortfeasors, holding that it was not necessary that separate formal legal proceedings should be instituted for that purpose. The Court of Appeal upheld that decision, holding that it was within the judge's discretion to take that course ([1939] 1 K.B. 51). He (Somervell, L.J.) would say nothing which could throw doubt on or would impede the practice in *Croston* v. *Vaughan*, *supra*, where no question arose as to discovery or as to the administering of interrogatories. But, where a defendant in such a case as the present was seeking to deliver interrogatories to another defendant and a contest arose, it was right that he should first issue and serve a notice on the other defendant under Ord. 16A, r. 12, which would involve an application for an order for directions. This case was a very good example of the importance of defining what was the right to be adjusted as between the two defendants.

DENNING, L.J., agreed. Appeal dismissed.

APPEARANCES: *H. I. Nelson*, K.C., and *R. H. Forrest* (*Carpenters*, for *Laces & Co.*, Liverpool); *Humfrey Edmunds* (*Hewitt, Woollacott & Chown*) (first defendants); *C. H. Duveen* (*George A. Herbert*, for *T. Moore*, Birkenhead).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

QUESTIONS OF FACT IN APPELLATE COURT

Clark *v.* Clark

Bucknill, Singleton and Birkett, L.JJ. 18th October, 1950

Appeal from the Divorce Divisional Court.

Justices found the respondent husband guilty of constructive desertion of the appellant his wife, and they held it not ended by a letter written by the husband through his solicitors as it was not a *bona fide* request to the wife to return. The Divisional Court allowed the husband's appeal from that decision, and the wife now appealed.

BUCKNILL, L.J., held that the justices had come to a right decision on the evidence.

SINGLETON, L.J., said that questions of fact were for the decision of the tribunal entrusted with the finding of facts. That was really the measure of his disagreement with the findings in the judgments of the Divisional Court. He did not disguise the fact that he might have formed a different opinion from that which the Divisional Court formed if he had had to judge the facts; but it seemed to him that the correct approach to the case was first to decide whether the constructive

desertion was still continuing, and then to decide whether the facts spoken to by the wife, and admitted in some instances by the husband, were " grave and weighty reasons " justifying the wife in her attitude. Sometimes it might be clear on which side of the fence a particular matter fell; but, if there were a course of conduct extending over a period of years, as here, it was for the tribunal of fact, the justices, to determine whether those occurrences were serious and weighty matters such as might well justify a wife in saying " I will not, I dare not, return, even though my husband has caused his solicitors to write this letter." His lordship referred to the statements of principle in *Watt (or Thomas)* v. *Thomas* [1947] A.C. 484, at pp. 486 and 488, and said that Lord Thankerton's words applied especially in a case such as the present. The justices had seen and heard the wife and had seen the husband, and they had been able to form an impression, on the evidence, whether it was reasonable to ask or compel her to return to his house. They had concluded that it was not. It was most important in the administration of justice that questions of that kind should be decided by the justices who saw and heard the witnesses and knew the local conditions. There was evidence on which the justices could find as they had found, and in his opinion no court had a right to interfere with their decision. The appeal should be allowed.

BIRKETT, L.J., agreed. Appeal allowed.

APPEARANCES: *L. F. Sturge (Hyde, Mahon & Pascall,* for *Frank J. Lambert & Co.,* Gateshead); *W. Latey,* K.C., and *J. B. Gardner (Gibson & Weldon).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

MUTUAL WILLS OF HUSBAND AND WIFE: SURVIVOR RE-MARRYING AND MAKING SECOND WILL

***In re* Green; Lindner *v.* Green**

Vaisey, J. 16th October, 1950

Adjourned summons.

A husband and wife made mutual wills in verbally identical terms. The will of the husband, who survived the wife, directed his trustees to stand possessed of his residue (including his half share in the matrimonial home) on trust for the wife absolutely if she survived him, but if she predeceased him on trust for X Hospital as to the home and furniture, and further upon trust to divide the remainder into two equal moieties, and to hold the respective moieties upon trust as to one moiety which should be considered as the testator's personal estate and as to the other moiety which should be considered as equivalent to any benefit received by the previous death of the wife; the trustees were directed to distribute each moiety to different individuals and charities. After the death of the wife in 1942, the testator became in 1943 entitled to a reversion under a will of a third person; that will provided upon the death of a tenant for life a residuary gift to the husband and wife in equal shares if they both survived the tenant for life, or to the survivor if only one survived the life tenant. In 1945 the testator married his second wife, and in December, 1946, he made a second will whereby he gave certain legacies to individuals and charities, and the residue to his second wife.

VAISEY, J., said that there were three possibilities: either the first will was inoperative as having been revoked by the second marriage, and second will; or the first will had to be carried wholly into effect; or the trusts of the first will were enforceable as to the wife's moiety only. Though the matter was not free from difficulty, the true view appeared to be that, in view of the language of the first will, and of the scheme which it disclosed, the husband's moiety became his own to dispose of as he wished and passed under the second will, while the wife's moiety had to be held upon the trusts of the first will; the testator's home and furniture passed to X Hospital under the first will.

APPEARANCES: *J. V. Nesbitt (Julius White & Bywaters);* *R. Jennings,* K.C., and *T. A. C. Burgess (E. Gordon Lawrence);* *R. M. E. Nesbitt; Lionel Edwards, A. J. Belsham; C. V. Rawlence; C. A. J. Bonner; H. E. Salt,* K.C., and *T. Dewhurst; Wilfrid M. Hunt; L. H. L. Cohen; B. S. Tatham (Rye and Eyre; Rexworthy, Bonser & Wadkin; Baker, Freeman, Watson, Hill, Bucknill & Co.; Gregory, Rowcliffe & Co.; Clayton, Sons & Fargus; May, May & Deacon; George W. Bower and Son; Edward F. Iwi; Cunliffe & Airy; Trotter, Leaf & Pitcairn).*

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

COMPANY: INCORPORATED ABROAD: WINDING-UP: EXECUTION

***In re* Suidair International Airways Limited**

Wynn Parry, J. 16th October, 1950

X, Ltd., a company incorporated in South Africa, was compulsorily wound up in South Africa by a provisional winding-up order dated 18th January, 1950 (which was made final on 14th February, 1950). On 31st January, 1950, Y, Ltd., a company incorporated in Great Britain and a judgment creditor of the South African company, issued writs of *fieri facias* under which the sheriff seized certain aeroplane engines, the property of the South African company. On 24th February, 1950, the provisional liquidator claimed the engines, and the sheriff interpleaded. On 28th March, 1950, a petition for winding up X, Ltd., was presented to the Companies Court in England; on 18th April, 1950, the liquidator's claim in the interpleader proceedings was barred and on 24th April, 1950, the English court made a compulsory winding-up order. The execution of Y, Ltd., with respect to the aero engines not being completed, the company applied for relief under the Companies Act, 1948, s. 325 (1) (*c*), which provides that the rights of the liquidator to the goods may be set aside by the court in favour of the creditor to such extent and subject to such terms as the court may think fit.

WYNN PARRY, J., said that the court had jurisdiction under s. 325 (1) (*c*) to do what was right and fair, and that that jurisdiction was not restricted: see *In re Grosvenor Metal Co., Ltd.* [1950] Ch. 63. In the circumstances of the case, it was just and proper to make the order applied for. It was no obstacle to the exercise of the court's discretion in favour of the creditor that, according to the law of South Africa, the levying of execution after the date of the presentation of the petition was void because in dealing with the assets of X, Ltd., within the jurisdiction, the court administered English law, though the English liquidation was only ancillary to the South African winding-up.

APPEARANCES: *R. E. Megarry (George & George);* *K. W. Mackinnon (Kenneth Brown, Baker, Baker).*

[Reported by CLIVE M. SCHMITTHOFF, Esq., Barrister-at-Law.]

INCOME TAX: SALE OF CINEMA RIGHTS IN NOVELS

Howson (Inspector of Taxes) *v.* Monsell

Danckwerts, J. 7th November, 1950

Case stated by the Commissioners for the Special Purposes of the Income Tax Acts.

An authoress had written a number of historical novels, which, she said, were the result of elaborate historical research, the characters and incidents all being historical. She sold the cinematograph rights in two of the books, and her husband was assessed to income tax on the proceeds under Case II of Sched. D to the Income Tax Act, 1918. The Special Commissioners allowed his appeal on the ground that the sums received were capital and not income. The Crown appealed, contending that they were revenue from the wife's trade or vocation as an authoress.

DANCKWERTS, J., said that the sums in question were paid to the authoress only because she was the owner of the copyright. The essential point was that she had for some time

been carrying on the vocation of an authoress of historical novels. Even if the payments made to her were capital sums, they were subject to tax if they were referable to the carrying on of that vocation. As the authoress had received those sums because she was carrying on the vocation of an authoress, and in the course of carrying it on, they were chargeable to tax under Case II of Sched. D. Appeal allowed.

APPEARANCES: *Sir Walter Monckton*, K.C., and *R. P. Hills* (*Solicitor of Inland Revenue*); *G. G. Honeyman* (*Pothecary and Barratt*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

DANGEROUS DRIVING: NOTICE OF INTENDED PROSECUTION

Holt *v.* Dyson

Lord Goddard, C.J., Byrne and Ormerod, JJ.
6th October, 1950

Case stated by Hove justices.

The defendant was charged with dangerous driving contrary to s. 11 of the Road Traffic Act, 1930. On the day in question she was involved in a serious accident and taken to hospital unconscious with severe head injuries. A week later, a police officer told her that the question of prosecuting her for dangerous driving was being considered. Four days later notification of intended prosecution was sent by registered post to her residence. Some two months later the defendant was discharged from hospital, the notice having been returned to the police in its unopened envelope. Section 21 of the Act of 1930 imposes three alternative conditions precedent to a conviction for dangerous driving, the third, (*c*), being that within fourteen days of the commission of the offence "a notice of the intended prosecution" containing specified particulars shall be "served on or sent by registered post to" the defendant. The justices were of opinion that a notice of intended prosecution under s. 21 must be either served personally or sent by registered post to the place where the addressee actually was or was reasonably believed by the addressor to be; and that, as the police knew that the defendant was in hospital and not likely to be discharged for a considerable time, the section had not been complied with. They accordingly dismissed the information. The prosecutor appealed.

LORD GODDARD, C.J., said that it was clear that it was within the knowledge of the police when they sent the notice that the defendant was in the hospital and not likely to be discharged for a considerable time. That being so, the sensible course would have been to serve the notice by hand or to send it to the hospital. *Stanley* v. *Thomas* [1939] 2 K.B. 462 was distinguishable on the facts: there the police reasonably believed that the defendant would be home from hospital before the statutory fourteen days expired. To comply with s. 21 (*c*) the police must act reasonably. If they knew where a defendant was they could send the notice to that place.

BYRNE and ORMEROD, JJ., agreed. Appeal dismissed.

APPEARANCES: *Harold Brown* (*Sharpe, Pritchard & Co.*, for *John E. Stevens*, Hove); *Gordon Friend* (*Malcolm, Wilson & Cobby*, Worthing).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT: TENANT'S FALL ON UNLIT STAIRCASE

Devine *v.* London Housing Society, Ltd.

Croom-Johnson, J. 10th November, 1950

Action.

The plaintiff, the tenant of a flat in a block of flats belonging to the defendants, was ascending the communal staircase, which was controlled and maintained by the landlords, at midnight, when, owing to the fact that the staircase lighting had gone out automatically by the operation of a time switch, she fell in the darkness and sustained injuries in respect of which she brought this action.

CROOM-JOHNSON, J., said that, as there was no express agreement, covenant, or undertaking by the landlords in relation to the lighting of the staircase, it was necessary to see whether it was possible to spell out some implied obligation on their part. He was satisfied that before the war the premises and the staircase were kept lighted until a very late hour. During the war lighting was restricted, but the staircase continued to be lighted to some degree. After the war the landlords had a clock system installed by which the lighting on the staircase was cut off automatically between 11 p.m. and midnight. The time of cutting off was erratic, and the tenants never knew when they came in whether the lights would be on or off. When the landlords adopted the clock system they gave no notice to any of the tenants. The question was whether there was any implied covenant by the landlords to maintain a reasonable standard of lighting so as to render the premises reasonably safe for the tenants. He was not constrained by any authority to hold that, because the landlords before and after the war in fact lighted the staircase in hours of darkness, there must be implied, in the absence of any express provision in the tenancy agreement, an obligation on their part to do so. He was also of opinion that the plaintiff tenant's claim must fail in tort, since the fact that the staircase was unlit was obvious to her and did not amount to an unusual danger so far as she was concerned. Judgment for the defendants.

APPEARANCES: *R. M. Everett* and *D. P. Croom-Johnson* (*Murray Napier & Co.*), *Gilbert Dare* (*Gardiner & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

HOUSE OF LORDS

PROGRESS OF BILLS

Read Second Time:—

Kirkcaldy Burgh Extension, &c., Order Confirmation Bill [H.C.] [7th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Administration of Justice (Pensions) Bill [H.C.]
[10th November.

To amend the law relating to the pensions and other benefits payable to and in respect of persons who administer justice, and for purposes connected therewith.

Dangerous Drugs (Amendment) Bill [H.C.].
[9th November.

To facilitate the consolidation of enactments relating to dangerous drugs by removing limitations on the extension to Northern Ireland of certain Acts amending the Dangerous Drugs Act, 1920, repealing the corresponding Acts of the Parliament of Northern Ireland and making necessary consequential amendments; and to make, as respects dangerous drugs, certain other amendments of law which are requisite in consequence of the supersession of the League of Nations by the United Nations or expedient with a view to the consolidation of such enactments as aforesaid.

European Payments Union (Financial Provisions) Bill [H.C.]
[8th November.

To make certain provision of a financial nature in connection with the operation of the European Payments Union Agreement and the furnishing of American Aid in connection therewith.

Exchequer and Audit Departments Bill [H.C.]
[3rd November.

To make further provision as to the salary and superannuation of the Comptroller and Auditor General.

Festival of Britain (Sunday Opening) Bill [H.C.] [9th November.

To legalise, or remove doubts about the legality of, the opening on Sunday of certain places of public resort to be provided as part of the Festival of Britain, 1951.

Superannuation Bill [H.C.] [3rd November.

To provide for disregarding certain temporary abatements of salary in calculating gratuities under sections thirty-nine and forty of the Superannuation Act, 1949, and allowances and gratuities of officers mentioned in Part I of the Third Schedule to the Supreme Court of Judicature (Consolidation) Act, 1925; and for reckoning as unestablished service certain service in the armed forces and other similar service performed by persons recruited to the civil service by reconstruction competitions after the thirtieth day of June, nineteen hundred and fifty.

Read Second Time :—

Colonial Development and Welfare Bill [H.C.] [9th November.

Glasgow Corporation Sewage Order Confirmation Bill [H.C.] [9th November.

Restoration of Pre-War Trade Practices Bill [H.C.] [10th November.

Solicitors Bill [H.C.] [8th November.

Read Third Time :—

Expiring Laws Continuance Bill [H.C.] [8th November.

B. DEBATES

In moving the Second Reading of the **Solicitors Bill,** the ATTORNEY-GENERAL said that the Bill had been introduced in the House of Lords as a private member's Bill, but had lapsed at the end of the last session. The Government realised that the Bill concerned a matter of some public urgency and had decided to adopt the Bill.

The Law Society, though established under a Royal Charter, had been made the chosen instrument of a number of statutes. It was composed of only those solicitors who chose to join it and pay its subscription, yet many of its functions were of such general concern and necessity to the whole body of the solicitor's profession, that all solicitors, whether they chose to be members of The Law Society or not, ought to make some financial contribution towards the work of the Society. In the past the Government had found it necessary to pay the Society an annual Exchequer Grant of £2,500, but the Bill would relieve the taxpayer of this burden. It was proposed to permit the Master of the Rolls—with the concurrence of the Lord Chief Justice and Lord Chancellor—to increase the fee on taking out a practising certificate to a sum not exceeding £5.

Sir HARTLEY SHAWCROSS said the legal profession had shown in modern times a very high sense of public duty, and he had no doubt that this was due very largely to the encouragement given by The Law Society and the Bar Council to a corporate sense of public responsibility, service and obligation in return for the privileges which members of the legal profession enjoyed. He commended in particular its indefatigable secretary, Mr. Lund, and Mr. Littlewood, for their assistance in bringing the Legal Aid Scheme into active operation.

Captain CROOKSHANK thought that the need for the Bill perhaps suggested that when Parliament ordered The Law Society or any other body to do something, it should see that they were placed in a financial position to carry out the orders. Lieutenant-Colonel LIPTON thought it an unnecessary anachronism and a slight on the Master of the Rolls that he should have to consult two other judges before taking the step of increasing the fee for practising certificates.

Sir PATRICK SPENS commended The Law Society for its hospitality, for which, he said, they were all indebted from time to time. When The Law Society came to Parliament to ask for something he did not think there was a member, lay or professional, who would hesitate to give them what they asked.

Mr. SYDNEY SILVERMAN said there were a great many people who were in favour of making membership of The Law Society compulsory—and indeed there was a strong case to be made out for that—but he thought they had been wise to avoid that temptation. Brigadier MEDLICOTT said he thought members of his profession, so far from feeling that it was a slight for the Master of the Rolls to have to consult two other judges, liked to think that the eminent gentlemen at the head of the legal profession were taking an interest, from time to time, in the welfare of solicitors, albeit on this occasion at their own expense. He would strongly oppose compulsory membership of The Law Society, but nothing of the kind had been attempted here.

Mr. L. M. LEVER said that since the fee had been fixed at £1 in 1922, seventeen statutory obligations had been laid upon The Law Society and a further thirteen upon the Registrar of Solicitors. He thought the profession was entitled to be reinforced financially, especially as it had become open to a much wider section of the community. [8th November.

During the debate on the Committee Stage of the **Expiring Laws Continuance Bill,** Mr. MARLOWE moved an amendment designed to remove from the Bill the Furnished Houses (Rent Control) Act, 1946. He did not object to the fundamental purpose of the Act, but he considered that it required considerable overhauling if it was to continue to fulfil a useful purpose. First, he would like to see the Act provide that there should be at least one legal member on each Rent Tribunal. This in itself would have prevented many of the numerous injustices which had arisen from tribunal decisions. A second defect was that the Act contained no provision for an appeal of any kind. The tribunals had no rules of evidence or procedure, they could make completely irrational findings, and yet there was no appeal therefrom. Moreover, their jurisdiction and powers had recently been widely increased by the Landlord and Tenant (Rent Control) Act, 1949.

Again, they had been provided with no formula whereby they might arrive at a just conclusion as to what was a "reasonable rent." The Lord Chief Justice himself had said that the Act permitted the tribunals to behave in a way which would not be tolerated in any ordinary court. He (Mr. Marlowe) would be quite content if some system of appeal to a central tribunal could be devised. Mr. JANNER contended that most of the tribunals already had a lawyer member, and where that was not so usually one of the officials, the secretary, for instance, was a lawyer. They did not really need lawyers, however, for their function was to decide a question of fact, viz., what was a reasonable rent. The tribunals were keeping down the cost of living and often prevented extraction of unreasonable rents by giving advice to the many people who came to them seeking it. Mr. DEREK WALKER-SMITH asked under which section of the Act did tribunals have power to give advice, and what happened later if the recipients subsequently wished to appear as parties before the tribunal in its judicial capacity? Mr. JANNER said there was nothing in the Act to prevent them giving advice. Mr. WALKER-SMITH thought that one of the reasons for the decision in the *Park West* case was that certain things had gone on behind the backs of the parties. Did the chairman explain to the parties, or did he not, what had gone on behind the back of one of the parties?

Sir PATRICK SPENS said he thought it wrong that a tenant should be under no obligation to pay rent after he had lodged an application with the tribunal. The Act was also creating a certain type of swindling tenant who got priority over honest tenants by offering to pay more than they could afford and then going to the tribunal to get the rent reduced.

The MINISTER OF HEALTH, replying to the debate, said he agreed that if legal forms were too frivolously violated, justice itself was often mutilated. But in some cases one could use a legal machinery which was so complicated and so expensive that in the end injustice was done. If there were a right of appeal from the rent tribunals, many people of humble circumstances would be deterred from going to them in the first instance. Moreover, he did not think it followed that there would be more legal light if there were a lawyer on every tribunal. He had been very impressed by the encomiums of The Law Society which he had heard earlier in the evening, and at the same time he was reading a letter on the very matter now under discussion which had been sent from The Law Society to all solicitor members. He did not object to that, but to the fact that the letter was full of misstatements. If The Law Society went hopelessly wrong on these matters which it had obviously studied carefully, why should one expect more legal light if there were a lawyer on every tribunal.

As to appeals, there was no appeal from a county court decision on a matter of fact, and there was no principle of law infringed in providing no appeal on fact from the rent tribunals. No one would suggest that because the criminal courts imposed a bad sentence from time to time, the whole system should be treated as if it had fallen into disrepute. The tribunals were doing a useful job and were building up a valuable reservoir of experience which would be useful when the Government came to frame the very much more far-reaching legislation concerning rents generally. [8th November.

C. QUESTIONS

Sir JOHN MELLOR asked when had the Prime Minister decided that the responsibility of the Minister of Labour for the consideration of prosecutions under the Conditions of Employment and National Arbitration Order should in practice be transferred to the Attorney-General. Mr. ATTLEE replied that no particular date could be assigned to the commencement of the practice of leaving the question of prosecutions in such cases to the Director of Public Prosecutions. [7th November.

Mr. GAITSKELL stated that 1st January, 1953, was decided on as the date before which the owner of a single plot would have to begin to build in order to be able to set off the development charge against his claim on the £300 m. fund, because that fund had to be distributed before 1st July, 1953, and a few months would be needed for the administrative arrangements. The claims of those owners who could not build before 1st January, 1953, would receive further consideration when the scheme for distributing the £300 m. was being prepared. [7th November.

Mr. CHUTER EDE stated that he was satisfied that the penalties prescribed by law for crimes of violence were adequate. The Government had no intention of re-introducing corporal punishment which, after full discussion, was abolished as a judicial penalty by s. 2 of the Criminal Justice Act, 1948. That Act had marked a notable advance in the treatment of offenders, and it would be premature to consider further changes in the law until more experience had been gained by its working. [9th November.

Mr. G. BROWN said that no action was taken by county agricultural committees to ensure that, where they had granted certificates to farmers who claimed possession of houses for essential farm use, such houses were in fact subsequently occupied by farm workers. The committee had no jurisdiction after it had issued a certificate. [9th November.

The ATTORNEY-GENERAL said that of the 9,060 applications for legal aid made during October, 773 had been granted by the end of that month. Of the 395 granted applications for which statistics had been compiled, 340 related to divorce proceedings. [10th November.

An answering questions on the Legal Aid Scheme, the ATTORNEY-GENERAL warned the House that he could not accept the responsibility of answering for the day-to-day administration of the scheme, which, under the 1949 Act, was administered by The Law Society subject to the general guidance of the Lord Chancellor. Subject to that *caveat* for the future, he said, he readily gave the answer to two questions by Mr. WILLIAM WELLS. By 31st October all the 112 local committees constituted under the scheme had held their inaugural meeting and, in accordance with para. 9 of the scheme, had arranged for the summoning of certifying committees. [13th November.

STATUTORY INSTRUMENTS

Air Navigation (Bedford War Memorial Unveiling) Regulations, 1950. (S.I. 1950 No. 1755.)

Aireborough Area (Conservation of Water) Order, 1950. (S.I. 1950 No. 1788.)

Argyll County Council (Kilmichael Glassary) Water Order, 1950. (S.I. 1950 No. 1789.)

Baking Wages Council (England and Wales) Wages Regulation (Holidays) Order, 1950. (S.I. 1950 No. 1762.)

Baking Wages Council (England and Wales) Wages Regulation Order, 1950. (S.I. 1950 No. 1761.)

Bristol Waterworks Order, 1950. (S.I. 1950 No. 1782.)

Draft **Calf Rearing Subsidy Scheme** (Variation of Payment) Scotland Order, 1950.

Central Institutions (Scotland) (Recognition No. 1) Regulations, 1950. (S.I. 1950 No. 1757.)

County Court Fees (Amendment) Order, 1950. (S.I. 1950 No. 1768.)

See p. 730, *ante*.

Defence Regulations (No. 8) Order, 1950. (S.I. 1950 No. 1772.)

Defence Regulations (Isle of Man) Order, 1950. (S.I. 1950 No. 1773.)

Discontinuance of Legalised Police Cells (Scotland) Rules, 1950. (S.I. 1950 No. 1783.)

Emergency Laws (Continuance) Order, 1950. (S.I. 1950 No. 1770.)

This order continues in force until 10th December, 1951, the following provisions of the Emergency Laws (Transitional Provisions) Act, 1946, namely, ss. 3, 6, 8 and 9 (this last section provides for the extension of certain emergency enactments relating to legal powers). The order also extends to the same date the following Defence (General) Regulations, namely, regs. 2BA, 16, 20AB, 33, 42CA, 45A, 50, 52, 55C, 60C, 60CC, 76, 82–85, 87–89, 90–93, 95–105 and Sched. III. Certain provisions of other series of Defence Regulations are similarly continued.

Emergency Laws (Miscellaneous Provisions) (Guernsey) Order in Council, 1950. (S.I. 1950 No. 1776.)

Emergency Laws (Miscellaneous Provisions) (Isle of Man) Order in Council, 1950. (S.I. 1950 No. 1774.)

Emergency Laws (Miscellaneous Provisions) (Jersey) Order in Council, 1950. (S.I. 1950 No. 1775.)

Food Rationing (General Provisions) (Amendment) Order, 1950. (S.I. 1950 No. 1791.)

Import Duties (Drawback) (No. 9) Order, 1950. (S.I. 1950 No. 1780.)

Imported Apples (Revocation) Order, 1950. (S.I. 1950 No.1740.)

Landlord and Tenant (Rent Control) (Amendment) Regulations, 1950. (S.I. 1950 No. 1763.)

These regulations amend regulations bearing the same title which were made in 1949. They require parties to an application to a rent tribunal to disclose names and addresses of other persons whom they know to have an interest in the dwelling-house concerned, and require the tribunal to notify such persons so that they may have an opportunity of appearing on the hearing.

London–Penzance Trunk Road (Doublebois Quarry Diversions) Order, 1950. (S.I. 1950 No. 1747.)

Meat Products and Canned Meat (Amendment) Order, 1950. (S.I. 1950 No. 1764.)

National Health Service (Medical Practices Compensation) Amendment Regulations, 1950. (S.I. 1950 No. 1744.)

Official Secrets (Penang and Malacca) Order in Council, 1950. (S.I. 1950 No. 1779.)

Patents (Extension of Period of Emergency) Order, 1950. (S.I. 1950 No. 1778.)

By this order the period of emergency for the purposes of s. 49 of the Patents Act, 1949, it extended to 10th December, 1951.

Registered Designs (Extension of Period of Emergency) Order, 1950. (S.I. 1950 No. 1777.)

This Order similarly deals with paragraph 4 of the First Schedule of the Registered Designs Act, 1949.

Retail Bespoke Tailoring Wages Council (England and Wales) Wages Regulation Order, 1950. (S.I. 1950 No. 1746.)

Sea Fisheries (Scotland) Byelaw (No. 49), 1950. (S.I. 1950 No. 1756.)

Shops (Extension of Period of Emergency) Order, 1950. (S.I. 1950 No. 1771.)

Southend-on-Sea Corporation Order, 1950. (S.I. 1950 No. 1786.)

Soya Beans (Revocation) Order, 1950. (S.I. 1950 No. 1765.)

Soya Flour (Revocation) Order, 1950. (S.I. 1950 No. 1766.)

Stopping up of Highways (Lincolnshire–Parts of Lindsey) (No. 1) Order, 1950. (S.I. 1950 No. 1754.)

Sulphuric Acid (Prices) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1784.)

Supplies and Services (Continuance) Order, 1950. (S.I. 1950 No. 1769.)

This Order extends until 10th December, 1951, the Supplies and Services (Transitional Powers) Act, 1945.

Upholstery Cloth (Utility) (Amendment No. 8) Order, 1950. (S.I. 1950 No. 1785.)

Utility Apparel (Women's and Maids' Outerwear) (Manufacture and Supply) (Amendment No. 2) Order, 1950. (S.I. 1950 No. 1743.)

Vitamin A (Revocation) Order, 1950. (S.I. 1950 No. 1790.)

Voluntary Homes (Return of Particulars) Regulations 1950. (S.I. 1950 No. 1758.)

Yeovil Rural Water Order, 1950. (S.I. 1950 No. 1760.)

NOTES AND NEWS

Honours and Appointments

Mr. K. J. T. ELPHINSTONE has been appointed Chancellor of the Diocese of Chester in succession to Mr. H. H. King, who died in August.

Mr. D. G. GILMAN has been appointed Clerk to the Derbyshire County Council and Clerk of the Peace. He will succeed Mr. H. W. Skinner, C.B.E., who is retiring shortly.

Prof. H. G. HANBURY, Vinerian Professor of English Law at Oxford University, has been elected an honorary Master of the Bench of the Inner Temple.

Mr. R. E. HUBAND, deputy clerk to Camberley Urban District Council, has been appointed clerk and solicitor to Bedworth (Warwickshire) Urban District Council.

Mr. TREVOR SCHOLES, assistant solicitor to Acton Corporation, has been appointed assistant solicitor to Wallasey Corporation.

Miscellaneous

In the recent announcement of the results of the match between the Bar Lawn Tennis Society and The Law Society, the name "M. K. Panty" should have read "M. H. Penty."

In a recent hockey match The Law Society beat the Institute of Chartered Accountants by six goals to four.

INTESTACY COMMITTEE

The Intestacy Committee recently appointed by the Lord Chancellor to consider certain aspects of the law relating to intestacy in England and Wales has now commenced its work, and evidence is invited from organisations interested in this matter. The committee proposes to take evidence in the form of written statements, which should be sent to the Secretary, Mr. D. R. Holloway, at the Principal Probate Registry, Somerset House, Strand, W.C.2, not later than 1st January, 1951. Individuals are requested, as far as possible, to submit their views to the committee through their appropriate organisations.

Witnesses are invited to concentrate their evidence on general observations on the state of the law and concrete proposals for reform, where this is thought necessary, rather than on individual cases of hardship, although such cases may helpfully be mentioned by way of illustration.

Wills and Bequests

Mr. L. Cotman, solicitor, of Preston, left £30,206 (£30,089 net).

Mr. T. W. Robinson, solicitor, of Birmingham, left £28,964 (£28,855 net).

OBITUARY

MR. R. BOLTON

Mr. Robert Bolton, solicitor, of Bolton, died on 28th October, aged 52. He was admitted in 1924.

MR. W. A. ENSOR

Mr. William Alexander Ensor, solicitor, of Bath Row, Birmingham, has died. He was admitted in 1923.

MR. A. J. C. MACKARNESS

Mr. Arthur John Coleridge Mackarness, solicitor, of Petersfield, clerk to the Petersfield Justices, died on 6th November, aged 85. He was admitted in 1890 and was clerk to Petersfield Rural District Council for forty-four years.

MR. W. J. McMILLIN

Mr. William John McMillin, solicitor, of Liverpool, died on 3rd November, aged 73. He was admitted in 1900 and was chairman of the Liverpool Radium Institute from 1933 to 1948.

MR. J. W. ORCHARD

Mr. John William Orchard, solicitor, of Exmouth, died on 2nd November, aged 77. Admitted in 1896, he was clerk to Woodbury Division magistrates from 1923 until he was succeeded by his son in 1946.

MR. E. A. PAINTER

Mr. Ernest Arthur Painter, solicitor, of Bristol, died on 7th November, aged 75. He was admitted in 1901.

MR. S. V. PINNIGER

Mr. Stanley Vickers Pinniger, retired solicitor, of Newbury, died recently, aged 87. He was coroner for the district for over thirty years, clerk to the Newbury Board of Guardians and Rural District Council for thirty-seven years and registrar of the Newbury County Court for forty-six years, retiring in 1945.

MR. J. QUINN

Mr. John Quinn, solicitor, of Church Street, Liverpool, has died, aged 72. He was admitted in 1902.

MR. O. J. TAYLOR

Mr. Owen Jemson Taylor, retired solicitor, of Loughborough, died on 30th October, aged 80. He was admitted in 1892 and was president of the Leicester Law Society in 1934.

SOCIETIES

The President of The Law Society, Mr. L. S. Holmes, LL.M., J.P., was the principal guest and speaker at the annual dinner of the PLYMOUTH INCORPORATED LAW SOCIETY, on 8th November. Other speakers were His Honour Judge P. L. E. Rawlins, Mr. T. R. McCready, president of the Plymouth Law Society, Mr. S. W. Cleave, president of the Devon and Exeter Incorporated Law Society, Mr. John Eliott, vice-president of the Plymouth Law Society, and Mr. John Woolland, of Plymouth.

The annual meeting of the LOCAL GOVERNMENT LEGAL SOCIETY will take place on 25th November, at the County Hall, Westminster Bridge, London, S.E.1. The programme for the day will be as follows: 11.30 a.m.—Address by Sir Howard Roberts, C.B.E., D.L. Questions and discussion; 12.45 p.m. for 1 p.m.—Luncheon at the invitation of the chairman of the London County Council; 3 p.m. to 4 p.m.—Annual meeting. The organising secretary for the lunch is Mr. F. Scott-Miller, Room 266B, County Hall, Westminster Bridge, London, S.E.1.

The UNITED LAW SOCIETY announces the following debates: Monday, 20th November—"That a reasonable belief by the defendant in the truth of a statement complained of should in all cases be a good defence to an action for defamation"; Monday, 27th November—"This House would view with approval the abolition of all restrictions on hours of sale of intoxicating liquor."

An ordinary meeting of THE MEDICO-LEGAL SOCIETY will be held at Manson House, 26 Portland Place, W.1 (Tel.: Langham 2127), on Thursday, 23rd November, 1950, at 8.15 p.m., when a paper will be read by Dr. F. E. Camps, on: "The Case of Stanley Setty."

BOOKS RECEIVED

Green's Death Duties. Third (Cumulative) Supplement to the Second Edition. By H. W. HEWITT, LL.B., of the Estate Duty Office. 1950. pp. xv and 121. London: Butterworth and Co. (Publishers), Ltd. 7s. 6d. net.

The Trial of Peter Griffiths. Notable British Trials Series, vol. 73. Edited by GEORGE GODWIN, of the Middle Temple, Barrister-at-Law, with an Appendix by C. STANFORD READ, M.D., Consulting Psychiatrist to the West End Hospital for Nervous Diseases. 1950. pp. 219. London: William Hodge & Co., Ltd. 15s. net.

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